
Dispute Resolution

Civil Servants and Corruption: how promising something to a civil servant can constitute an act of corruption

Corruption is commonly associated with financial loss to the state. However, this interpretation can be misleading as the concept of corruption under the Indonesian anti-corruption law (“**Anti-Corruption Law**”) encompasses a far broader range of conduct than only activity that leads to state loss. The Anti-Corruption law formulates 30 types of action that may be deemed as corrupt, which can be divided into the following seven categories:

- (i) corruption related to state financial loss;
- (ii) bribery;
- (iii) malfeasance;
- (iv) extortion;
- (v) tort;
- (vi) conflict of interest in procurement; and
- (vii) gratification payments.

In this alert we focus on bribery and gratification payments made to civil servants.

Who can be liable?

Under the Anti-Corruption Law, the following parties can be held criminally liable for bribery or making gratification payments:

- (i) any person (whether an individual or a corporation) who offers a bribe/gratification payment; and
- (ii) any civil servant / state administrator who receives a bribe/gratification payment.

The Anti-Corruption law defines ‘civil servant / state administrator’ broadly, and includes directors, commissioners and other officials of state-owned enterprises and regional government-owned enterprises.

Promises as a form of bribery/gratification

Pursuant to the Anti-Corruption Law, one element that must be proven to establish a bribery/gratification payment offence is the “**giving or promising of something**” by the giver and “**accepting gifts or promises**” by the recipient. What we need to remember is that both promising something, and accepting a promise, constitutes an act of corruption.

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Unfortunately, the Anti-Corruption Law does not define what is meant by "something", "promises", or "accepting promises". In other words, pursuant to the Anti-Corruption Law, things and promises in any form that are given to, or received by, any official could constitute corruption.

Illustration

Let's consider the following illustration:

Mr. X is a director of a company that just received a financial sanction for breaching the regulation relating to waste management of hazardous materials. He requests a meeting with officials at the Ministry of the Environment to discuss the sanction. The following conversation takes place during this meeting:

Mr. X: "Sir, if you revoke the sanction for my company, then I will give you one million Rupiah in cash." In this situation, the official can respond in one of the following ways:

- (i) "Ok sir, thank you."
- (ii) "Oh, we can revoke that sanction quite easily."
- (iii) (Refrain from answering).

If the conversation above happened between Mr. X (a private citizen) and an official, then Mr. X's action of promising something to the official will be considered as an act of corruption.

The question is, what action should the official take when faced with the above situation in order to avoid liability under the Anti-Corruption Law? Should the official choose between responses (i), (ii), or (iii)?

The absence of a definition for "**accepting promises**" under the Anti-Corruption Law forces us to interpret "accepting promises" based on its grammatical construction. Indeed, by refraining from defining "accepting promises," the Anti-Corruption Law seems to indicate that "accepting promises" should be interpreted in the context of the commonly accepted definition of the terms. The leading Indonesian language dictionary (KBBI) defines "accept" as:

- (i) ✓ to welcome; to take (obtain, accommodate, etc.) something that is given, delivered, and the like.
- (ii) ✓ to ratify; to justify; to approve (a proposal, suggestion, etc.); to pass or grant (requests and the like).

From the above KBBI definition, because the act of "approving" or even "justifying" can be considered as an act of "accepting", then under the Anti-Corruption Law, the official should not respond to Mr. X with responses (i), (ii), or (iii). Therefore, the only response that is appropriate for an official faced with the above situation is to express their rejection explicitly.

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In relation to this matter, Chandra M. Hamzah, the Head of the Dispute Practice Group at Assegaf Hamzah & Partners, considers that when faced with a similar situation, officials should note that:

1. All official matters related to the official's position should only be discussed in an official capacity and conducted at an official location.
2. The Official should avoid attending any meeting alone, without being accompanied by another person occupying an equivalent or similar position to himself/herself.
3. If there is any indication of a promise being given, an official must immediately express his/her rejection clearly and explicitly.
4. The official must immediately report any indication of the giving of a promise to a direct employer or supervisor at the first opportunity (e.g. the board of directors report to the board of commissioners).

If you have any queries regarding the above, please contact our senior partner Chandra M. Hamzah: chandra.hamzah@ahp.id.

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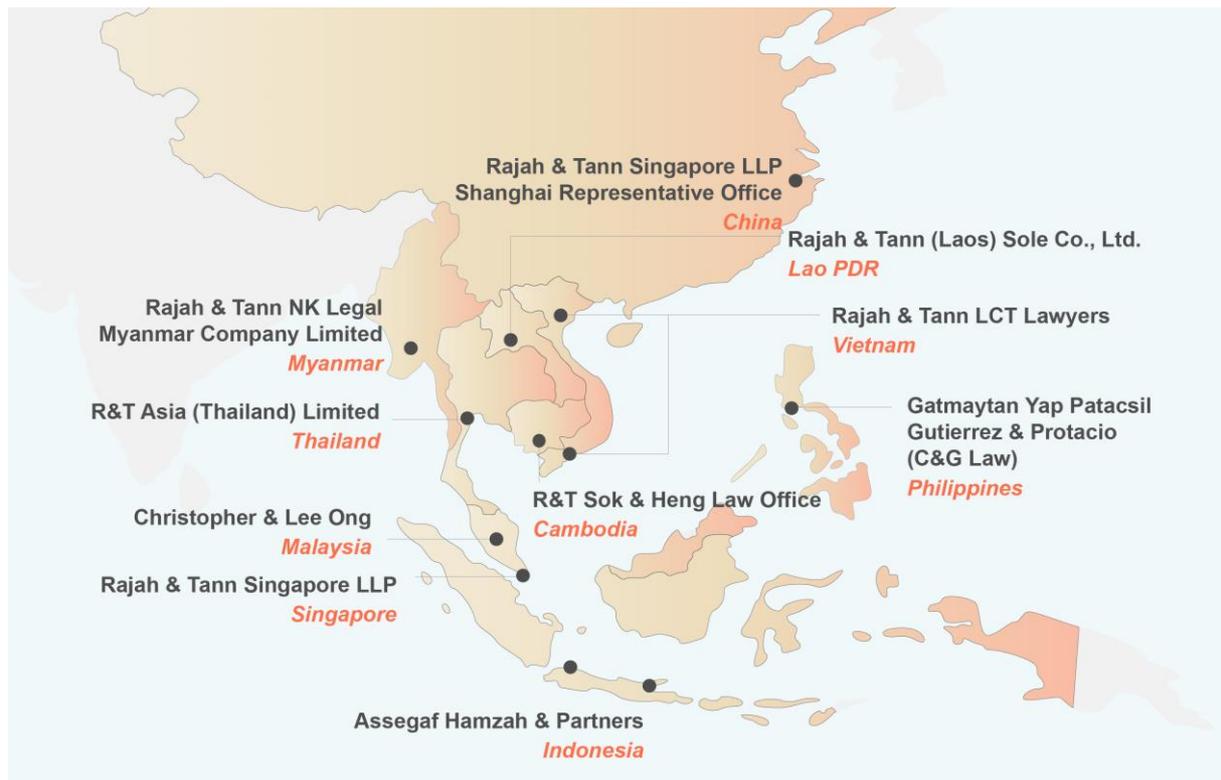
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