

The Legality of Wiretapping in Exposing Corruption Crimes in Indonesia

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Abstract. *Law enforcement in eradicating corruption that is committed conventionally is currently experiencing various obstacles, because in terms of the quality of crimes being committed today it is increasingly systematic and complex. So that an extraordinary law enforcement method is needed, one of which is giving authority to institutions and law enforcement agencies, namely the Attorney, Police, and the Corruption Eradication Commission to carry out wiretapping (interception). It has been proven that wiretapping carried out by the Corruption Eradication Commission (KPK) is very effective and has become one of the keys to the success of the KPK in uncovering criminal acts of corruption with full authority in wiretapping and the results can be seen from the Hand Catch Operation (OTT). However, the laws and regulations governing wiretapping still have several weaknesses, including that there is no limit to wiretapping carried out by an agency authorized to wiretapping a person to the detriment of that person because personal information can be known to all by eavesdroppers and can be misused by irresponsible parties. On the other hand, the authority to carry out wiretapping is needed to facilitate law enforcement in finding evidence in exposing corruption crimes.*

Keywords: *Enforcement; Corruption; Crime.*

1. Introduction

Wiretapping in terminology can be interpreted as a process, method, or denotes an act, or the act of carrying out wiretapping.¹Meanwhile, tapping in the Big Indonesian Dictionary (KBBI) means listening to (recording) other people's information intentionally and secretly.²Whereas in the Elucidation of Article 30 C

¹Kristian, A Little Bit about Wiretapping in Positive Law in Indonesia, Bandung: Nuansa Aulia, 2013, p. 179.

²Indonesia Dictionary, <https://oldi.lipi.go.id/public/Kamus%20Indonesia.pdf>, downloaded on March 25, 2022, p. 1337.

letter i. What is meant by "tapping" is the activity of listening to, recording, diverting, altering, obstructing, and/or recording the transmission of electronic information and/or electronic documents, using either wired communication networks or wireless networks, such as electromagnetic beams or radio frequency, including checking packets , postal, correspondence, and other documents.³

Based on the Regulation of the Minister of Communication and Informatics Number 11/PER/M.KOMINFO/02/2006 concerning Technical Wiretapping of Information contains two terms of wiretapping. These two terms are:

- a. Wiretapping of information, namely listening to, recording, or recording a conversation conducted by law enforcement officials by installing additional tools or devices on a telecommunications network without the knowledge of the person conducting the conversation or communication
- b. Lawful interception is the activity of wiretapping information carried out by law enforcement officials for the benefit of controlled law enforcement and the results are sent to the Monitoring Center owned by law enforcement officers.

Article 28 F of the 1945 Constitution of the Republic of Indonesia states that every person has the right to communicate and obtain information to develop his personality and social environment, and has the right to seek, obtain, possess, store, process and convey information by using all types of available channels, the State of Indonesia guarantees protection of the right to communicate and obtain information.

Wiretapping in Indonesia is not permitted because it is a criminal act unless mandated by law and carried out for a specific purpose. Wiretapping can be a powerful tool for uncovering crimes, but on the other hand wiretapping can be a tool for a state invasion of its citizens or can harm certain parties.

Wiretapping is one of the efforts or procedures used in the context of investigations and investigations in the criminal justice system. In this case the institution that has the authority is the Investigative Agency in criminal law enforcement (pro justisia), or a special institution that is authorized in law to carry out wiretapping, as well as in the process of investigations and investigations in eradicating criminal acts of corruption which are very big crimes. , and has a very

³Explanation of Article 30 C letter i Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia

bad impact on the nation and the state, therefore eradication must be carried out in extraordinary ways, one of which is by wiretapping.⁴

2. Research Methods

This research use the normative approach with the qualitative methods. The data collections use the library research and take the positive law as the basic guidance. The analysis is taken by supervision and data reduction to take the conclusion.

3. Result and Discussion

The development of technology and information today, especially in the 21st century, is very fast. This development, on the one hand, has had a positive impact on human civilization, but on the other hand, it has had a negative impact, namely opening up new opportunities to take advantage of technological advances as facilities for committing crimes or often called (new dimension of crime).

corruption crimes have progressed in carrying out their actions, especially supported by advances in communication technology that are used by corruptors (corruptors) to carry out their actions. This is what makes it difficult for law enforcement to detect corruptors. Therefore, an extraordinary way is also needed to uncover organized and structured crimes, one of which is by wiretapping to uncover cases, arrest the perpetrators and find evidence so that they can bring the perpetrators to court.

In relation to law enforcement, wiretapping is an alternative in criminal investigations into the development of crime modes, or it can also be used as a means of preventing and detecting crimes. Wiretapping in Indonesia can be carried out by 5 (five) investigative and non-investigative agencies that are authorized by law, namely the State Intelligence Agency, the Corruption Eradication Commission (KPK), the Police, the Attorney General's Office, and the Judicial Commission (KY).

3.1. Corruption Eradication Commission

Specifically in the Handling of Corruption Crimes through the Investigation process and Investigation Institutions that have the authority to conduct wiretapping, namely the Corruption Eradication Commission in accordance with what is mandated by the provisions of Article 12 Paragraph 1 letter a Act No. 30 of 2002 concerning the Corruption Eradication Commission, which reads that in the framework of carry out the duties of investigation, investigation and prosecution

⁴Ahadi Fajrin Prasetya, Authority of Non-Investigating Institutions in Conducting Wiretapping, Faculty of Law, Tulang Bawang University, Lampung, Pro Justitia Journal (JPJ), Vol. 1, No. 1, February 2020

as referred to in Article 6 letter c, the Corruption Eradication Commission has the authority to wiretapping and recording conversations.⁵

The wiretapping technique carried out by the Corruption Eradication Commission is not explained in Law No. 30 of 2002 concerning the Corruption Eradication Commission, but there are several things that must be considered. This is in accordance with the Regulation of the Minister of Communication and Information Number: 11/Per/ M. Kominfo/02/2006 concerning the technique of wiretapping information which forms the basis of the KPK's wiretapping procedures, including:⁶

- a. The Corruption Eradication Commission must send target identification to telecommunications operators, both electronically and non-electronically.
- b. Wiretapping of telecommunications must be carried out by the Corruption Eradication Commission with a predetermined Standard Operating Procedure (SOP), with acts of disrupting the smooth flow of communication and telecommunications users and must be reported by the Corruption Eradication Commission to the General Post and Telecommunications.
- c. Communications providers are required to assist the Corruption Eradication Commission in carrying out wiretapping by law by preparing a maximum capacity of 2% of the capacity registered in the Home Location Register of the installed capacity for each local central public telephone network (PSTN).
- d. To ensure transparency and independence in wiretapping, a monitoring team was formed consisting of the Directorate General of Post and Telecommunication, the Corruption Eradication Commission and the relevant communications operator, with duties and authorities in accordance with an order issued by the Corruption Eradication Commission.
- e. Information obtained from wiretapping is confidential, so that the results of wiretapping may not be traded or disseminated in any way, except for the Eradication of Criminal Acts of Corruption in accordance with the provisions of applicable law by trying to uncover criminal acts of corruption.
- f. Costs for tools and equipment for wiretapping information are borne by the Corruption Eradication Commission, while costs for recording capacity in the form of HLR and PSTN are borne by the communication provider.

3.2. The Attorney General's Office of the Republic of Indonesia

After the ratification of Act No. 11 of 2021 concerning Amendments to Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the

⁵Article 12 Paragraph (1) Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission

⁶Regulation of the Minister of Communication and Information Number: 11/Per/ M. Kominfo/02/2006 concerning information wiretapping techniques

Attorney General's Office of the Republic of Indonesia has new duties and authorities related to Law Enforcement Intelligence in Article 30 C letter i states the Duties and Authorities of the Attorney General's Office wiretapping based on the Special Law which regulates wiretapping and organizes a monitoring center in the field of criminal acts".⁷

Currently there is no law that specifically regulates wiretapping. Wiretapping arrangements are already contained in several laws, but they do not regulate wiretapping in detail. Several laws regulate the authority of state apparatus, mechanisms and procedures for wiretapping.

Act No. 14 of 2008 concerning Public Information Disclosure in Article 18 paragraph 3 says that in the interests of examining criminal cases in court, the Head of the Indonesian National Police, the Attorney General, the Chief Justice of the Supreme Court and/or the heads of other state law enforcement agencies who are authorized by law can disclose information that is exempt as referred to in Article 17 letters a, b, c, d, e, i and j.⁸

3.3. Republic of Indonesia Police

The substances stipulated in the Regulation of the Head of the National Police of the Republic of Indonesia Number 5 of 2010 concerning Procedures for Wiretapping at the Monitoring Center of the Indonesian National Police consist of 4 major parts, namely procedures for wiretapping requests; carrying out wiretapping and monitoring operations; wiretapping results; as well as supervision and control of wiretapping actions.⁹

Regarding the first matter, namely the procedure for wiretapping requests, in the Regulation of the Head of the Indonesian National Police Number 5 of 2010 concerning Wiretapping Procedures at the Monitoring Center of the Indonesian National Police, it is strictly regulated in Articles 5 to Article 12, while with regard to other matters secondly, namely the implementation of wiretapping and monitoring operations, is strictly regulated in Article 13 to Article 17, relating to the third matter, namely the results of wiretapping is strictly regulated in Articles 18 to Article 21 and the last one relating to the supervision and control of wiretapping actions is regulated expressly in Article 22.

In Regulation of the Head of the National Police of the Republic of Indonesia Number 5 of 2010 concerning Wiretapping Procedures it is stated that the Head

⁷Article 30 C letter i Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia

⁸Article 18 Paragraph (3) Law of the Republic of Indonesia Number 14 of 2008 concerning Public Information Disclosure

⁹Regulation of the Head of the National Police of the Republic of Indonesia Number 5 of 2010 concerning Procedures for Wiretapping at the Monitoring Center of the Indonesian National Police

of the Criminal Investigation Agency (Kabareskrim) of the National Police is appointed by the National Police Chief as the official who gives permission to commence wiretapping operations. Investigators and/or Polri investigators submit a request for the commencement of wiretapping operations which are submitted to the Kabareskrim Polri for the National Police Headquarters level or through the Kapolda to the Kabareskrim Polri for the regional level. A copy of the request for the wiretapping operation as referred to above to the Chief of Police and the request for the wiretapping operation, the Kabareskrim Polri will consider whether or not it is appropriate to carry out a wiretapping operation.

Supervision and Control of wiretapping which is strictly regulated in Article 22 of the Regulation of the Chief of Police of the Republic of Indonesia Number 5 of 2010 concerning Wiretapping Procedures which states emphatically that in order to guarantee transparency and accountability in the implementation of wiretapping operations, it stipulates that the Kabareskrim Polri as supervisor and supervision is carried out covering all aspects of operational activities except those related to wiretapping products.¹⁰

There is a Constitutional Court (MK) Decision regarding wiretapping, namely the Constitutional Court Decision for Case Number 5/PUU-VIII/2010. The Constitutional Court's decision emphasized that wiretapping must be regulated in law. The Constitutional Court's decision confirmed Article 28J of the 1945 Constitution of the Republic of Indonesia that restrictions on human rights (HAM) by wiretapping must be regulated by law. Decision of the Constitutional Court for Case Number 5/PUU-VIII/2010 dated 24 February 2011 which in essence confirmed the following:

- a. The right to privacy is not part of the rights that cannot be reduced under any circumstances (non-derogable rights), so that the state can place restrictions on the exercise of these rights by using the law as stipulated in Article 28J paragraph (2) of the Law The Constitution of the Republic of Indonesia". The Court further stated, "To prevent the possibility of abuse of authority for wiretapping and recording, the Court is of the opinion that it is necessary to stipulate a set of regulations governing the conditions and procedures for wiretapping and recording in question."
- b. The law in question must further regulate, among other things, who is authorized to issue wiretapping and recording orders. Can they be issued after sufficient initial evidence has been obtained, which means that the wiretapping and recording of conversations is to complete the evidence, or are wiretapping and recording of conversations already in progress? can be done to find sufficient preliminary evidence. In accordance with the

¹⁰Ibid.

instructions of Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, all of this must be regulated by law in order to avoid abuse of authority that violates human rights.

- c. The Constitutional Court assessed that until now there has been no comprehensive regulation regarding wiretapping. This shows that the regulation regarding wiretapping is still scattered in several laws with different mechanisms and procedures. There is no standard setting regarding wiretapping, thus allowing deviations in implementation. So it is necessary to have a special law that regulates wiretapping in general, to wiretapping procedures for each authorized institution. This law is urgently needed because until now there is still no synchronous regulation regarding wiretapping so that it has the potential to harm the constitutional rights of citizens in general.

3.4. Wiretapping According to Islamic Law

Islamic law is Allah's law which contains benefits for human life both in this world and in the hereafter. Actions that are prohibited by Islamic law are acts of jarimah or criminal acts. Each finger must have elements that must be fulfilled, namely the texts that it prohibits, namely those who carry out legal actions. As for legal threats that are prohibited or stipulated by *syara'* in the form of *haad* or *tajr*, however, there are still many people who violate acts that violate the law, which should be obeyed and whose actions are prohibited by Allah SWT.

Tapping cellphones, or other media means *Tajusus*, namely finding out the disgrace or mistakes and spying on other people that they are hiding, which they don't like when other people know. In Surah Al-Hujurat: 12 which means: O you who believe, stay away from too much presumption (suspicion), because some of presumption is a sin and don't look for bad things in people and don't gossip about each other. Is there anyone among you who likes to eat the flesh of his dead brother? So of course you feel disgusted with him and fear Allah. Verily, Allah is the Accepting of repentance, the Most Merciful.

Furthermore, in an authentic hadith, the Messenger of Allah once said which means:

"Don't spy on each other and don't find fault with each other, and don't hate one another and don't put each other down either, but be all of you servants of Allah, brothers and sisters."

Wiretapping can be said to be one of the extraordinary efforts and is a legal breakthrough in preventing and overcoming this new type of crime that is rife. the authority to provide wiretapping must be given to an actual institution, meaning that the authority to carry out wiretapping should not be given to an institution whose basic function is not as an institution tasked with uncovering, dismantling or making light of a crime.

In Islamic law Allah SWT prescribes for the benefit of humans and among the benefits that are to be realized in the law are assets that are preserved from the transfer of property rights that are not in accordance with legal procedures and also from utilization that is not in line with the will of Allah SWT. For this reason, the prohibition of seizing, stealing, pickpocketing and others is the maintenance of the security of assets from unauthorized ownership. Prohibition of using it as a gambling bet and also giving it to other people who are believed to be used for immoral acts, because use that is not in accordance with the way of Allah SWT makes the intended benefit not be achieved.

Thus the benefit of individuals and society as well as the realization of syar'i goals have obligated the granting of some individuals the right to perform acts that were originally prohibited for everyone. If an act that is prohibited is permissible to do to create a certain benefit, logically it is to create a benefit, whereas the prohibited permissibility creates that benefit.¹¹

4. Conclusion

The legality of Wiretapping is still scattered in various laws and regulations There is no law that specifically regulates wiretapping. still has several weaknesses, including there is no limit to wiretapping carried out by authorized agencies to wiretapping someone to the detriment of that person because personal information can be known to all by eavesdroppers and can be misused by irresponsible parties. In addition, the existence of wiretapping results which are used as evidence in court cannot be contested, because there is no unified mechanism that regulates clearly and unequivocally. The laws and regulations governing wiretapping only have their respective mechanisms in their respective institutions and do not have a strong legal basis.

5. References

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¹¹Taslisah Team, Islamic Criminal Law Encyclopedia (Bogor. PT. Kharismallmu, 2007), p. 136.

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