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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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ANALYSIS WIRETAPPING AUTHORITY UPPER KPK LAW ENFORCEMENT IN THE PERSPECTIVE OF HUMAN RIGHTS

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ABSTRACT

Corruption still thrives in the country, if we listen to the news certainly no news about corruption in the bureaucracy in this country, reporting on corruption makes sad because it turns out the culprit educated and have a certain position in the structure of government, but so far the efforts of law enforcement do KPK to catch the perpetrators of corruption have yielded results, there are some major corruption cases were successfully handled by the KPK, the key to the success of the Commission in uncovering cases of corruption is the result of tapping, by tapping the Commission can uncover cases of corruption in the country. The Act authorizes the Commission to conduct wiretaps, as stipulated in article 12 paragraph (1) of Law No. 30 of 2002 on the Corruption Eradication Commission, through the authority of KPK tapping it makes corruption can be prosecuted Legally. However, on one hand, tapping Authority, has given the assumption that the wiretapping conducted by the Commission can be considered to violate human rights that violates a person's privacy. This study wants to answer: Does the wiretapping conducted by the Commission can be regarded as a violation of human rights? Does the eavesdropping law enforcement can be implemented by the Commission? Purpose of this study was to determine whether the wiretapping can be categorized can violate human rights, and Do by tapping enforcement efforts could implement by the Commission. The method used in this research is descriptive qualitative. This study concluded that the Authority Tapping the Commission do not constitute a violation of human rights, as is the procedure to conduct wiretaps are in accordance with the legal instruments in force, and besides tapping is done to satisfy the justice of the people who suffer as a result of behaviors corruption, by tapping also KPK can dismantle the big cases, so every year since the Commission established, there are cases of corruption revealed by the Commission, it is thus the rule of law for the perpetrators of corruption can be implemented.

Keywords: Wiretapping Authority Commission, Law Enforcement, Human Rights

A. Introduction

Corruption has a devastating effect on the progress of a nation, especially in creating development. Development as a planned process of change that encompasses all aspects of community life difficult due to the fact of bribery, deprivation and exhaustion of state finance such a massive performed by the apparatus of state officials. The fragility of the moral and the low level of honesty leads to corruption.

As with any online media to preach about the arrests of IG, who served as Chairman of the Legislative Council, and the shock increased when the nominal money

attached to them when OTT only Rp. 100 Million. When at the same time turns Commission also set a prosecutor in West Sumatra High Court as a suspect in connection with proceedings are being handled, where the prosecutor acts as though as its legal advisor.¹ End of last week the Commission also set a US Cimahi Mayor and husband IT as a suspect, after receiving a transfer of 500 million, the money is part of a commitment to bribe 6 billion from the value of the New Upper Market development project second phase in 2017 worth 57 billion.²

Commission action indiscriminately, revealing Corruption, actually prove the seriousness of the crime KPK in eradicating corruption has adverse and potentially increasing poverty in the country. In addition, the country also suffered material losses not least due to corruption.

The presence of the Commission considered like a fresh wind to the law enforcement and legal systems indiscriminately. Through Law 30 of 2002 on Corruption Eradication Commission hereinafter referred to as the Corruption Eradication Commission (KPK) The commission's legal status is expressly defined as a state institution in carrying out its duties and powers are independent and free from the influence of any the commission aims to improve the effectiveness and efficiency of efforts to combat corruption which has been running since earlier.³

However, even though they are independent and free from any rule, the Commission remains dependent on the executive power in relation to organizational problems, and have a special relationship with the judiciary in the prosecution and trial of corruption cases.⁴ Going forward, the position of state agencies such aids the Commission requires a stronger legal legitimacy and firmer and greater support from the public.⁵

¹ Yudi Kristiana, dikutip dari Makalah yang disampaikan dalam Seminar Nasional dengan tema “Merefleksikan dan Menguraikan Pemikiran Hukum Spiritualistik Pluralistik (Sisi Lain Hukum Yang Terlupakan)” dan Sub Tema bidang Penegakan Hukum “Pandangan Esmi Warassih Tentang Keadilan Hukum” yang diselenggarakan oleh Asosiasi Sosiologi Hukum Indonesia (ASHI) bekerja sama dengan kelompok Diskusi Hukum Esi Warassih (KEDHEWA) dalam rangka memperingati 40 tahun pengabdian Prof. Dr. Esmi Warassih, SH, M.S dalam pembangunan ilmu hukum di Indonesia, tanggal 20-21 Oktober 2016 di Aula Gedung Pascasarjana Universitas Diponegoro, Semarang

² Kompas, Wali Kota Cimahi Di Kendalikan Suami, *Harian Kompas* Sabtu 3 Desember 2016

³ Jimly asshiddiqie, *Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi*, Sinar Grafika, (Jakarta Timur, Mei 2010), hlm 193-196

⁴ <http://plazsave.blogspot.co.id/2016/03/makalah-kpk.html>, October 23, 2016

⁵ <http://argama.wordpress.com/2007/08/15/kedudukan-lembaga-negara-bantu-dalam-sistem-ketatanegaraan-republik-indonesia-analisis-kedudukan-komisi-pemberantasan-korupsi-sebagai-lembaga-negara-bantu/>, diakses pada tanggal 03-12-2014

KPK's success in dismantling all kinds of practices of corruption among government officials, can not be separated from the authority of the Commission in conducting the surveillance.⁶ Tapping as primary sources (primary source) and spiritual authority of the Commission In fact, Indriyanto said, tapping can be used as the main tool to uncover evidence of malicious intent and the involvement of numerous parties in an alleged corruption. Act authorizes the Commission to conduct wiretaps, as stipulated in article 12 paragraph (1) of Law No. 30 of 2002 on the Corruption Eradication Commission which states that:⁷

"In carrying out the task of investigation, investigation, and prosecution as referred to in Article 6 letter c, the KPK is authorized to: a. wiretapping and recording conversations"

About mechanism and authority limits wiretapping carried out by the Commission raises the assumption the public that the authorities wiretapping by the Commission is breaking the law even violate human rights, which violates the right to privacy, which raises the issue to make revisions to the Law Commission.

This study wants to answer the question: (1) Is the act of tapping the Commission could be considered a violation of human rights? Is the Wiretapping Authority law enforcement can be implemented by the Commission?

B. Discussion

1. Actions Tapping the Commission of Human Rights Perspective

Tapping Commission basically can not be considered a violation of the law before there is a special law that regulates in detail the mechanism and limits the implementation of wiretapping by the Commission. That is because the legal system in Indonesia adheres to the principle of legality(principleoflegality)that is the principle which determines that no prohibited if it is not determined in advance in the legislation.⁸

In the context of human rights protection, then the entire tapping is essentially banned for violating citizens' constitutional rights, namely the right of privacy of any

⁶ Kompas.com, KPK: Penyadapan Jadi Alat Bukti Utama Ungkap Kasus Korupsi, Kamis , 18 juni 2015

⁷ Citra Mandiri, Himpunan Peraturan Perundang-Undangan Republik Indonesia 2002 (Jilid III), Jakarta : CV. Citra Mandiri, hal. 245

⁸ Moeljatno, Asas-Asas Hukum Pidana, Jakarta : Rineka Cipta, 2002, hal. 23.

person to communicate, as provided by Article 28F of the 1945.⁹Of this prohibition may be violated because the constitution stipulates that the ban on wiretapping could be excluded otherwise provided by law (UU) in the interest of law enforcement.¹⁰

This is in line with Article 19 of the Universal Declaration of Human Rights and Article 19 paragraph (1) of the International Covenant on Civil and Political Rights, that the act of tapping is part of forceful measures which should only be done under the Act and must be arranged with the procedural law through legislation a special set of procedural law against law enforcement material.

Referring to the rule above, assumes that intercepts the KPK is not a violation of human rights. Because the Act authorizes the Commission to conduct wiretaps, as stipulated in article 12 paragraph (1) of Law No. 30 of 2002 on the Corruption Eradication Commission which states that "In carrying out the task of investigation, investigation, and prosecution as referred to in Article 6 letter c, the KPK is authorized to: a. wiretapping and recording conversations. " At least in Indonesia there are nine Act which authorizes intercepts to law enforcement agencies.¹¹

That is why In the formal legality, the KPK is authorized to perform this action in order to conduct surveillance, finding evidence and prove the alleged corruption and bring him to court. Another consideration is already doing this tapping their strong suspicion that was obtained from reports, monitoring reports (indication) and preliminary evidence enough. Although the formal legality KPK has the authority to

⁹ Secara umum *ratio decidendi* putusan perkara No. 5/PUU-VIII/2010, Mahkamah Konstitusi menyatakan bahwa penyadapan merupakan sebuah tindakan yang melanggar privasi orang lain dan oleh karenanya melanggar hak asasi manusia (HAM) akan tetapi untuk kepentingan nasional yang lebih luas, seperti halnya penegakan hukum, hak tersebut dapat disimpangi dengan pembatasan. menurut Mahkamah Konstitusi, pengaturan dengan menggunakan undang-undang akan memastikan adanya keterbukaan dan legalitas dari penyadapan itu sendiri, dengan merujuk keterangan yang disampaikan oleh Idris Kasim, MK meengatakan bahwa penyadapan hanya boleh dibolehkan bilamana memenuhi beberapa pra-syarat berikut: (a) adanya otoritas resmi yang ditunjuk oleh Undang-Undang untuk memberikan izin penyadapan (biasanya Ketua Pengadilan),(b) Adanya jaminan jangka waktu yang pasti dalam melakukan penyadapan, (c) pembatasan penanganan materi hasil penyadapan , dan (d)pembatasan mengenai orang yang dapat mengakses penyadapan

¹⁰ Simon Butt, *Corruption in Indonesia*, New York: Routledge, 2012, hal. 54.

¹¹ BAB XXVII WVS Tentang Kejahatan Jabatan, 2. Undang-Undang Nomor 5 Tahun 1997 Tentang Psikotropika, 3 Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi, IV Perpu Nomor 1 Tahun 2002, Tentang Pemberantasan Tindak Pidana Korupsi, 6. Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat, 7 Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang, 8, Undang-Undang No 11 Tahun 2008 Tentang Informasi Dan Transaksi, Elektronik Dan, 9 Undang-Undang 35 Tahun 2009 Tentang Narkotika. Selain Itu Terdapat Dua Peraturan Pemerintah Dan Satu Peraturan Menteri Yang Juga Mengatur Mengenai Penyadapan Yaitu: 1 Peraturan Pemerintah Nomor 19 Tahun 2000 Tentang Tim Gabungan Pemberantasan Tindak Pidana Korupsi, 2 Peraturan Pemerintah Nomor 52 Tahun 2000 Tentang Penyelenggaraan Jasa Telekomunikasi, Dan 3 Peraturan Menteri Informasi Dan Komonikasi Nomor 11 Tahun 2006 Tentan Teknis Penyadapan Terhadap Informasi

conduct wiretaps, does not mean that the Commission can be arbitrary in its use. There should be a procedure which can be accounted before wiretapping.

KPK tapping is done to uncover the truth and justice in combating corruption, tapping has become one of the 'weapon' potent for KPK to uncover cases conventionally difficult to detect.¹² Tapping a part of one of the techniques to obtain information in the investigation of and as a basis for setting the stage subsequent investigation. In commentary according Bagir Manan Tapping as deprivation of liberty can only be done as part of the criminal procedural law as well as seizure and search.¹³ Thus, information in recording the interception proved very effective in order to obtain evidence by the Criminal Code so as to reveal the existence of corruption.¹⁴

Thus tapping is said not to violate human rights, when done for the sake of disclosure cases. In other words, human rights violations occur if the results leads are used for interests outside of law enforcement. KPK is the main driving institutions to eradicate corruption in Indonesia today. All parties understand how vital tapping activities for Commission efforts to uncover corruption cases. KPK's success in dismantling corruption scandal so synonymous with success in intercepting conversations perpetrators. During the Commission conduct wiretaps in the interest of law and the disclosure of a criminal case, then it is not a violation of human rights.¹⁵

KPK's authority is derived from Act No. 30 of 2002, may be cited as the legitimate authority according to the laws in force, and not have to get permission from the District Court (PN), but if of wiretapping it turned out to cause harm, it has been provided rehabilitation or compensation mechanism it. It thus as stipulated in article 63 paragraph (1) and (2) of Law No. 30 of 2002. This mechanism is given as a form of implementation of the principle of legal certainty and justice are concerned with the protection of human rights.

Based Theory of Science of Legislation, Law Commission made more specifically, one of which is the authority to conduct wiretaps, because of the specificity of a Commission which handles cases that are korupsi. extraordinary

¹² <http://www.hukumonline.com/berita/baca/lt565d4ca90d85b/melihat-penyadapan-dari-kacamata-hukum>, 23 Juni 2016

¹³ Bagir Manan, dkk, *Perkembangan Pemikiran dan Pengaturan HAK Asasi manusia di Indonesia*, Alumni, Bandung, 2006, hlm. 129-152

¹⁴ <http://www.hukumonline.com/berita/baca/lt565d4ca90d85b/melihat-penyadapan-dari-kacamata-hukum>, 23 Juni 2016

¹⁵ Diana Napitupulu, *KPK in Action*, Depok: Raih Asa Sukses, 2010, hlm. 110

crimeThe special properties possessed by the Commission is one of them had a key success in handling corruption through wiretapping authority.

2. In doing authority Wiretapping Law Enforcement Commission.

In law enforcement in Indonesia, tapping is done in connection with proceedings-criminal matters. According to Barda Nawawi Arief, causes and conditions that are kriminogen for the emergence of corruption are multidimensional, which can be in the field of moral, social, economic, political, cultural, bureaucratic / administration and so on.¹⁶

This proves the importance of tapping the KPK in eradicating corruption will also be the law enforcement efforts. From the interception Commission has uncovered several cases. Some examples of wiretaps conducted by the Commission which arise are multidimensional:¹⁷

- (a) Cases of bribery in the processing of immigration documents at the Indonesian Embassy in Malaysia with the former police chief accused Rusdihardjo. This is the case when Rusdihardjo served as the Indonesian Ambassador to Malaysia. Ynan state losses caused by this corruption case reaches 15 billion.
- (b) YPPI fund corruption case, involving the Governor of Bank Indonesia, Burhanuddin Abdullah.
- (c) Cases involving disbursement YPPI besan President, Aulia Pohan. Bribery case involving prosecutor Urip Tri Gunawan and Suryani Arthalita. Prosecutor Urip was caught receiving 610,000 dollars from Arthalita Suryani. Prosecutor Urip was sentenced to 20 years in prison, while Arthalita sentenced to 5 years in prison.
- (d) Cases of corruption involving members of the House of Al Amin Nasution. Members of this House suspected of accepting a bribe of 71 million and 33,000 Singapore dollars from Bintan District Secretary.
- (e) Cases of corruption involving Members of Parliament Hamka Yamdhu. Hamka Yamdhu suspected of receiving bribes from Bank Indonesia amounted to 31.5 billion rupiah.
- (f) Bribery case one member of the Commission to the audit team, which Mulyana W. Kusuma (2005).

¹⁶ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*, Citra Aditya Bakti, Bandung, 2013, hlm. 67

¹⁷ <http://forum.viva.co.id/indeks/threads/daftar-kasus-korupsi-yang-berhasil-ditanganikpk.1928747/>, 5 Desember 2016

- (g) The case in the Commission in 2005 with the suspect Nazaruddin Sjamsuddin, Safder Yusacc, and Hamdani Amin.
- (h) Cases of bribery committed by Abdullah Puteh legal counsel to the clerk of the High Court of Jakarta in 2005. The suspect in a corruption case this is Teuku Syaifuddin Popon, Syamsu Rizal Ramadhan, and M. Soleh.
- (i) Bribery case Chief Justice of the Supreme Court dealing with cases Probosutedjo. KPK in this case successfully uncover suspects, namely Harini Wijoso, Sinuhadji, Pono Waluyo, Sudi Ahmad, Suahrtoyo, and Triyadi.
- (j) disclosure of corruption cases occurred at the Embassy of Malaysia in 2005.
- (k) The corruption case involving former Gubernur West Java, Danny Setiawan, namely the purchase of heavy equipment by pemerintah West Java province in 2003-2004
- (l) The case of the former head of traffic police corps was widely quoted after the police chief candidates Budi Gunawan named as a suspect. Similar to Gunawan, Djoko Susilo which fell because of corruption in the project exam simulator driving licenses it had against the Commission which then triggered the war Cicak versus Buaya first volume. However, Inspector General Djoko Susilo jailed for 18 years by the court.
- (m) Lutfi Hasan Ishaq picked up and detained KPK on January 2013 on suspicion of receiving gifts or promises associated with the administration of import quotas on meat at the Ministry of Agriculture. The man who when arrested served as President of the Prosperous Justice Party (PKS) is sentenced to 16 years in prison.
- (n) Catching Rudi regarded as a blow, given the former Head of the Special Working Gas is known as a clean and honest. In fact Rudi Kernel Oil received a bribe of US \$ 400 thousand.
- (o) Ratu Atut from Banten is the focus of this case, it is being plugged power menggurita in Banten province when the Commission changing its status to suspect. The governor fell case of procurement of medical equipment and the alleged bribery related to the handling of electoral disputes regional head Lebak, Banten. Golkar's young politicians dovinis four years in prison.
- (p) Ambitious women who had experienced across Bank Indonesia officially became a suspect in January 2012 in the case of bribery checks for members of the House. The money disbursed during the election of Bank Indonesia Senior

Deputy Governor Miranda was subsequently convicted of 2004. The period of stay of three years behind bars.

- (q) Urip Tri Gunawan, a former strong man in the Attorney General's Office, caught red-handed by the KPK received money of 610,000 US dollars in home obligor Arthalita Suryani BLBI Syamsul Nursalim. Urip was sentenced to 20 years in prison.
- (r) Nazaruddin was arrested while serving Democratic Party Treasurer. He caught the bribery case Wisma project SEA Games athletes. After briefly escaping, Nazaruddin finally arrested in Cartagena, Colombia. In the progress of the case, the man who later was sentenced to four years in prison ten months have come to drag the names involved.
- (s) The arrest of Anas among others successfully thanks to the "song" Nazaruddin. The man who was then still served as Chairman of the Democratic Party later sentenced to eight years in prison by the court. But he was not the last Democrat leaders were snared by the Commission related Hambalang case.
- (t) Once a suspect receiving bribes of Rp. 3 billion of regents Gunung Mas and money laundering related to the election dispute, former chairman of the Constitutional Court, Akil Mochtar, officially picked up by the Commission. He was the only one convicted of corruption gets life sentence of Corruption.
- (u) Former Chairman of the United Development Party (PPP), Suryadharma Ali named as a suspect case of alleged corruption organizing the pilgrimage. The designation was announced in the heat of the election campaign ahead of the 2014 Presidential Election

The above phenomenon indicates that conditions will memprihatingkan behavior of corruption in this country. Even the United Nyoman Putra Jaya said that the negative consequences of their corruption is very destructive to the life of the nation, even corruption is a deprivation of economic and social rights of the people of Indonesia.¹⁸ From a number of law enforcement by the KPK in many cases disclosed by the Commission according to Teten Masduki, must be done from the upstream.¹⁹

As an independent agency was the duty of the Commission to fight corruption and should not compromise on itKPK law enforcement in an effort to uphold the law

¹⁸ Nyoman Serekat Putra Jaya, Beberapa Pemikiran ke arah Pengembangan hukum pidana, Citra Aditya Bakti, hlm. 69

¹⁹ <http://www.pikiran-rakyat.com/nasional/2016/04/22/teten-masduki-puji-ott-penegak-hukum-oleh-kpk-367426>

in accordance with the concept of rule of law. The idea of a state of law has been put forward by Plato, when he introduces the concept of Nomoi regarded as the forerunner of the idea of the state of law. In Nomoi argued that good governance is based on regulation (law) is good.²⁰

For the Commission, tapping can only be done after the last letter of assignment signed by KPK embracing collective leadership among the five commissioners. While the decision to conduct wiretaps based on the need to strengthen evidence in investigation activities. Where corruption law enforcement purpose is to recover losses to the state, stabilize the public economy and give deterrent effect to the corruption.

With the above description it is clear it seems that the definition of law enforcement it's more of an effort being made to make the law, both in formal sense narrow and in terms of materiel broad, as the code of conduct in any legal actions, both by the legal subjects concerned as well as by law enforcement officials who formally given the task and authorized by law to ensure the proper functioning of the legal norms in force in the life of society and state.

C. Conclusions

1. The commission was created because of the situation of corruption outstanding (extraordinary crime), based on human rights instruments, *pegurangan* one's rights are permitted provided they are regulated by law, is done in the interests and objectives objective valid and shall be held by a legitimate product, therefore wiretaps during the Commission did not constitute a violation of human rights, in the formal legality KPK has the authority to conduct wiretaps, as stipulated in article 12 paragraph (1) of Law No. 30 of 2002 on the Corruption Eradication Commission, through the authority of KPK tapping it makes corruption can be prosecuted Legally. but the future regulation of wiretapping should be regulated through an Act as it relates to restrictions on the right to freedom of a person in accordance with that provided in Article 28 A of the Constitution of 1945 and Article 32 of Law No. 39 of 1999 on Human Rights.
2. The authority tapping the Commission has strengthened the Commission in support *pembarantasan* corruption, tapping is done to satisfy the justice of the people who

²⁰ Ridwan HR. "Hukum Administrasi Negara". Penerbit UII Press, Yogyakarta 2003, hlm. 2

suffer as a result of behaviors corruption, by tapping also KPK can dismantle major cases, so every year since the Commission established, there are cases of corruption uncovered by the Commission, it is thus the rule of law for the perpetrators of corruption can be implemented.

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