
AUTHORITY OF TAPING AS A TOOL OF EVIDENCE IN CRIMINAL ACTS OF CORRUPTION IN INDONESIA

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ABSTRACT

Introduction: On the side of corruption crime, law enforcers are given special rights to obtain and access electronic information to strengthen evidence of corruption cases. The range of wiretapping on privacy related to human rights and its importance as electronic evidence in criminal acts of corruption, the purpose of this study is to examine wiretapping as evidence in criminal acts of corruption in Indonesia without violating constitutional rights. **Methods:** This research method uses normative jurisprudence with secondary data sources obtained through library research, including primary legal materials, secondary legal materials, and tertiary legal materials, both in the form of documents and regulations relating to wiretapping on corruption. At the same time, the data analysis technique used descriptive qualitative. **Result:** The principle of wiretapping is the legal basis of Law Number 19 of 2019; the law further explains legal certainty regarding granting permits to the Supervisory Board so that the KPK leadership can take immediate action. However, giving special keys to the apparatus must be balanced with caution to avoid misusing. Because the privileges granted intersect with the personal rights of every community, it is prone to human rights violations if it exceeds the limit / outside the problem of corruption. **Conclusion:** Law enforcement action against corruption gives special powers to law enforcers to obtain and use electronic information. The range of wiretapping on privacy related to human rights and the importance of such information as evidence of corruption must consider the applicable laws without violating constitutional rights.

Keywords: Wiretapping, Corruption, Crime.

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INTRODUCTION

Human innovation and creativity in developing increasingly sophisticated technology will affect all fields, one of which is the law. Law following changes from time to time is one of openness to science. The spread of technological developments to various countries, including Indonesia, is due to globalization. Because of the need and usefulness of technology quickly entered the wider community. As a result, people's lives are increasing in utilizing these technologies. Without realizing it, today's technology can make an opportunity or threat for users (Savitri, 2019).

Corruption prevention measures are one of the efforts to eradicate corruption by increasing public trust in law enforcement and openness in handling corruption so that the public can access information (Waluyo, 2022). Meanwhile, from the prosecutor's point of view, the law (doesn't mean to rule out pros and cons) gives law enforcement officials the authority to obtain and use electronic information to strengthen the evidence in corruption cases (Azhar, 2018).

Eradication of corruption is a sequential and systematic action to prevent and eradicate corruption (through coordination, monitoring, investigation, prosecution, and judicial review) and involve the public in following statutory regulations (Awaluddin & Mukaddimah, n.d.). The latest fundamental legal entity for corruption crimes for the KPK is Law Number 19 of 2019, although it is still being studied (Hertanto, 2020).

One of the benefits of this technology is wiretapping as an effort to force corruption. Wiretapping is the use of technology to find information on criminal acts of corruption as legal evidence in the eyes of the law. This form of wiretapping in the form of electronic surveillance is in the form of talking or recording the target to obtain electronic evidence (Rachmad, 2016).

On the other hand, wiretapping can be linked to violating the privacy of everyone whose human rights are unknown to everyone (Fitria, 2017). This means that not everyone has the right to access wiretapping, and some limitations are only for his knowledge, not for someone's privacy. Wiretapping that violates the law is carried out not by law enforcers who have been regulated by law. Even though law enforcers have received the authority to conduct wiretapping, they cannot do anything beyond the specified limits because this instrument is sensitive to human rights related to personal data.

The KPK can conduct wiretapping if it gets a letter of assignment signed by the KPK leadership for the decision to conduct wiretapping to obtain/strengthen the evidence in investigation activities that have indicated corruption. The wiretapping results were obtained as one of the activities of investigators to collect information related to the indications of deterioration (Utami, 2020).

However, the act of wiretapping in its occurrence causes diversity because there is no precise monitoring mechanism, and it is carried out depending on the target. In addition, due to the lack of clarity in the legal regulations regarding wiretapping, the target cannot challenge the wiretapping results, and question the wiretapping performance mechanism carried out by law enforcement officers (Eddyono, 2014).

Indonesia gets the lowest rating in protecting the right to privacy because the wiretapping law lacks clarity on the mechanism. The government has not been able to balance human rights regarding individual privacy with the authority of law enforcement. There needs to be firmness and clarity in the law so that there is no friction between the right to privacy and the limitations of the wiretapping mechanism (Natamiharja et al., 2022).

The scope of wiretapping on privacy related to human rights and its importance as electronic evidence in criminal acts of corruption, the purpose of this study is to examine wiretapping as evidence in criminal acts of corruption in Indonesia without violating constitutional rights. The existence of wiretapping as evidence can view electronic evidence as new evidence that adds evidence in the Criminal Code or the expansion of evidence in the Criminal Code and by wiretapping is an extension of the evidence guide, thus helping the process of criminal acts of corruption in Indonesia.

METHOD

The research method uses a normative juridical approach, which is a systematic stage related to the legal field to complete/search for data information through library materials/secondary materials (Soekanto, 2007); (Soemitro, 1994); (Asikin, 2004). Data collection techniques with

document study. Data analysis studies library materials/secondary data from documents and applicable laws and regulations related to legal norms and primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials such as wiretapping under competence in Article 26 of Law no. 26. 31/1999, together with Law no. 31. 20/2001 and Article 12 letter an of Law no. 12. Against the Decree of the Corruption Eradication Commission Number 30 of 2002 and Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

The data analysis uses qualitative descriptive, which describes the policy of synchronizing the laws and regulations regarding the criminal act of wiretapping corruption, then evaluates whether the implementation follows the normative provisions.

RESULTS AND DISCUSSION

Wiretapping is not done because of choice as the first action; this is done because of considerations and decisions to obtain evidence of criminal acts of corruption (Hertanto, 2020). In the case of bribery, wiretapping is one of the last ways to unravel the riddle of this particular case. Many corruption problems have been uncovered because of wiretapping, and this method is considered to solve severe and systematic crime problems. Wiretapping is an action that produces a positive solution to expose criminal acts, but this instrument is sensitive to the privacy rights of the target.

Indonesian regulations on wiretapping are regulated in several laws outside the Criminal Procedure Code (Fachrunisa, 2021). Indonesia has 13 rules and regulations, but these only address the power of wiretapping. As a result, the proper legal form for conducting wiretapping is not regulated, which means that the provisions regarding wiretapping are limited to granting power and do not discuss wiretapping methods. Therefore, this activity may intersect with the violation of their rights.

The 1945 Constitution in Article 1 paragraph (3) explains, "The State of Indonesia is a state of law". Article 17, paragraph (1) of the International Covenant on Civil and Political Rights stipulates, "No one may be arbitrarily or unlawfully interfered with in his personal, family, home or correspondence matters, or unlawfully assaulted his honour. and his good name."

The wiretapping arrangement in the KPK Law has clarified the tapping mechanism, which must be approved by the supervisory board first, and then wiretapping can be carried out. Because a wiretapping is not the first step in the investigation but the final step in strengthening evidence. Cases of acts of corruption are exceptional cases that are very likely to violate human rights if carried out without applicable provisions. In Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, a wiretapping mechanism is established. For example, article 12, paragraph 1 states, "In carrying out the task of investigation and investigation as referred to in article 6 letter e, the Corruption Eradication Commission has the authority to conduct wiretapping". Article 12, in Law Number 30 of 2002, has points in the form of,

Article 12B

"(1) Wiretapping, as referred to in Article 12 paragraph (1), shall be carried out after obtaining written permission from the Supervisory Board.

(2) To obtain a permit, as referred to in paragraph (1), it is carried out based on a written request from the Head of the Corruption Eradication Commission.

(3) The Supervisory Board may give written permission to the request as referred to in paragraph (2) no later than 1 x 24 (one time twenty-four) hours from the date the request is submitted.

(4) If the Head of the Corruption Eradication Commission obtains written permission from the Supervisory Board as referred to in paragraph (3), wiretapping is carried out no later than 6 (six) months from the receipt of written permission. It can be extended 1 (one) time for the same time.
."

Article 12C

"(1) Investigators and investigators report the ongoing wiretapping, as referred to in Article 12 paragraph (1), to the leadership of the Corruption Eradication Commission regularly.

(2) The wiretapping, as referred to in Article 12 paragraph (1), which has been completed, must be accountable to the Head of the Corruption Eradication Commission and the Supervisory Board no later than 14 (fourteen) working days as of the wiretapping is completed."

Article 12D

"(1) The results of the wiretapping, as referred to in Article 12 paragraph (1), are confidential and only for the interest of the judiciary in the Eradication of Corruption Crimes.

(2) Wiretapping results not related to Corruption Crimes that the Corruption Eradication Commission is handling must be destroyed immediately.

(3) If the obligations as referred to in paragraph (2) are not carried out, the official and the person who keeps the wiretapping results shall be subject to criminal penalties following the provisions of the laws and regulations."

The Corruption Eradication Commission has special authority to obtain evidence of talks to eradicate corruption in Indonesia. According to Arteria, "This great authority must be balanced with prudence so it is not misused. Wiretapping and recording of conversations is a limitation of human rights. All of that must be regulated to avoid abuse of authority that violates human rights and the accuracy of law enforcement" (Mahkamah Konstitusi Republik Indonesia, 2020).

However, according to KPK investigators in (Indonesia 2020), the investigation mechanism in Law Number 19 of 2019 can weaken the law enforcement process by the KPK. The regulation is deemed to hinder action in the investigation that should be carried out as soon as possible so that those indicated as targets can be processed and do not eliminate the electronic evidence.

Furthermore, the Corruption Eradication Commission's existence of Law Number 11 of 2008 concerning Information and Electronic Transactions does not pose a threat that must be monitored for wiretapping actions (Mahkamah Konstitusi Republik Indonesia, 2020). This is because the Corruption Eradication Commission (KPK) takes wiretapping actions considering the applicable provisions so that in its implementation, it is prudent without reducing the constitutional rights of the wiretapping target. Therefore, the KPK does not interfere with the right to privacy because it has followed its limitations, and the restriction of wiretapping information is only in corruption cases and nothing more.

Article 12 of 1948 of the Universal Declaration of Human Rights stipulates that "there shall be no arbitrary interference in the personal, family, domestic or correspondence of any person; there

is also no violation of honour and good name. Everyone has the right to legal protection against such interference or violations". And Article 28G paragraph 1 of the 1945 Constitution states that "everyone has the right to personal protection, honour, dignity and property under his control, and has the right to a sense of security and protection from threats. Fear of doing or not doing something. This is a human right. Based on these three laws, the right to privacy is a human right that the State must protect. All actions taken by the State through its institutions must not violate these human rights provisions. Because Human Rights are the Constitutional Rights of every citizen". Based on the regulation of the legal entity, it explains that although the use of technology, in this case, is wiretapping by law enforcement officers, there are still considerations of human rights on the right to privacy other than those relating to indications of corruption cases that cannot be interfered with in their affairs.

CONCLUSION

On the side of the criminal act of corruption, the law provides special authority to law enforcers to obtain and use electronic information. The range of wiretapping on privacy related to human rights and the importance of such information as evidence of corruption must consider the applicable laws without violating constitutional rights. Wiretapping arrangements in the KPK's new and fundamental legal basis, Law Number 19 of 2019, emphasizing the provision of legal certainty to carry out a mechanism for granting permits for wiretapping because the previous regulation did not have any rules explaining the granting of licenses by the Supervisory Board so that the KPK leadership could act immediately. Such great authority must be balanced with prudence. Because a wiretapping is not as easy as the general public perceives, some limitations emphasize constitutional rights, namely their privacy.

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