

RECONSTRUCTION OF THE REGULATION OF WIRING AUTHORITY BY THE CORRUPTION ERADICATION COMMISSION IN HANDLING CORRUPTION CRIMES

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ABSTRACT

This research aims to analyze regulations, weaknesses, and reconstruct regulations regarding the Regulation on the Authority of the Corruption Eradication Commission in Carrying Out Wiretapping in Corruption Crimes which so far has not been fair, because the regulations regarding wiretapping authority are still sectoral and there is no specific law regarding wiretapping. The results of this research are First, the Regulation on the Authority to Wiretapping by the Corruption Eradication Commission in Handling Corruption Crimes Currently Has Not Fulfilled the Value of Justice, because the authority of the Corruption Eradication Commission in carrying out wiretapping for criminal acts of corruption is as regulated in the provisions of Article 12C of Law Number 19 of the Year 2019 concerning amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission has not been able to run optimally because there is no special law regarding wiretapping and evidence of wiretapping has not been regulated as valid evidence in the Criminal Procedure Code. Second, the weaknesses that exist in the current regulation of wiretapping authority by the Corruption Eradication Commission in handling criminal acts of corruption in Indonesian positive law are weaknesses in terms of legal substance, weaknesses in terms of legal structure and weaknesses in terms of legal culture. Weaknesses in terms of legal substance include that regulations regarding wiretapping as electronic evidence have not yet been regulated in the Criminal Procedure Code, there is no legal regulation regarding wiretapping and there is no harmonization of the regulation of electronic evidence. Weaknesses in terms of legal structure include overlapping powers of wiretapping and lack of skilled human resources for electronic evidence. Meanwhile, weaknesses in terms of legal culture include that the evidence used in criminal evidence is still limited to the Criminal Procedure Code and the culture of law enforcement in Indonesia is still positivistic. Third, by strengthening the authority of the Corruption Eradication Commission to carry out wiretapping authority to prevent and eradicate criminal acts of corruption through the reconstruction of Article 12C of Law Number 19 of 2019 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

Keywords: Corruption ;Eradication; Commission; wiretapping

INTRODUCTION

The lack of clarity regarding the mechanism and limits of the wiretapping authority carried out by the Corruption Eradication Commission has given rise to public assumptions that the Corruption Eradication Commission's wiretapping authority has violated the law and even violated human rights, namely violating a person's right to privacy.¹ Basically, wiretapping by the Corruption² Eradication Commission cannot be considered a violation of law until there is a special law that regulates in detail the mechanisms and limits on the implementation of wiretapping by the Corruption Eradication Commission. This is because the legal system in Indonesia adheres to the principle of legality, namely the principle that determines that no act is prohibited if it is not determined in advance in statutory regulations (which in the Dutch language is stated: *nullum delictum nulla poena sine praevia lege*).³

The Corruption Eradication Commission's wiretapping can only be considered a violation of the law if the wiretapping process is not carried out by an authorized official, for example a person from the Corruption Eradication Commission carries out wiretapping even though he is not an investigator with the Corruption Eradication Commission who is examining a case. This is because in Article 12 paragraph (1) letter (a) of the Corruption Eradication Commission Law it is stated that in matters of inquiry and inquiry the Corruption Eradication Commission has the authority to conduct wiretapping. The authority to conduct wiretapping does not lie with the Corruption Eradication Commission (KPK) but with the Corruption Eradication Commission investigators who are examining a case.⁴

Basically, wiretapping is very necessary to obtain evidence in this "white collar" (corruption) case, because it is difficult to obtain evidence in this case so that conventional methods are no longer considered effective. During the reign of President Abdurrahman Wahid, the Joint Team for the Eradication of Corruption Crimes, which did not have the authority to conduct wiretapping, could not do much and could not reveal the corruption cases that occurred, because it did not have the authority to wiretapping, that is why the Corruption Eradication Commission has the authority to wiretapping. should not be abolished.

The existence of regulations that will limit wiretapping to the Corruption Eradication Commission has reaped many pros and cons in various circles. Those who oppose the regulation consider that the law governing the wiretapping mechanism of the Corruption Eradication Commission must be determined by law, not a government regulation, because a government regulation will actually hamper efforts to eradicate corruption. Indonesia Corruption Watch (ICW), for example, actually considers that the

¹Kristian, "The Urgency of Corporate Criminal Accountability", 44th Year Journal of Law and Development No. 4, October – December 2013, page. 575-621.

² Wawan Setiyawan, Anis Mashdurohatun, The Reforming Of Money Politics Cases In Election Law As Corruption Crime, Law Development Journal, Volume.3.Issue.3.2021.pp. 621-629

³Moeljatno, Principles of Criminal Law, (Jakarta: Rineka Cipta, 2002), page. 23

⁴Citra Mandiri, Collection of Legislative Regulations of the Republic of Indonesia (Volume III), (Jakarta: CV. Citra Mandiri, 2002), page. 245..

regulation regarding Wiretapping Procedures for Law Enforcement is an attempt to weaken the authority of the Corruption Eradication Commission.⁵

The Corruption Eradication Commission's authority to conduct wiretapping of criminal acts of corruption committed by a person, then based on Article 12 paragraph (1) letter a of Law Number 30 of 1999 concerning the Eradication of Corruption Crimes, the Corruption Eradication Commission (KPK) is given full authority to carry out wiretapping and recording conversations that occur between the perpetrators of criminal acts of corruption and people involved in the criminal acts of corruption. The Corruption Eradication Commission's authority to carry out wiretapping does not require permission from other parties outside the Corruption Eradication Commission, such as a court or other institution, because it has been mandated by law and the legal basis is clearly regulated. The Corruption Eradication Commission's authority to carry out wiretapping does not violate the constitution. This was stated by the Constitutional Court. The wiretapping mechanism carried out by the Corruption Eradication Commission is based on a strict Standard Operational Procedure (SOP) and is regularly audited by the Ministry of Communication and Information Technology. The Corruption Eradication Commission's Standard Operating Procedure (SOP) only requires the approval of the leadership to carry out wiretapping. Auditing of wiretapping activities carried out by the Corruption Eradication Commission is based on Minister of Communication and Information Regulation No. 11/Per/M. Kominfo/020/2006.

In connection with the authority of the Corruption Eradication Commission in wiretapping the handling of corruption cases, currently the Constitutional Court (MK) has canceled the authority of the Corruption Eradication Commission Supervisory Board regarding the granting of wiretapping, search and/or confiscation permits carried out by the Corruption Eradication Commission (Corruption Eradication Commission) through MK Decision No. 70/PUU-XVII/2019 regarding the review of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission against the 1945 Constitution of the Republic of Indonesia, which was read on May 4, 2021. The court rejected the application for a formal review of Law Number 19 of 2019 and granted part of the request for judicial review of a number of norms in the law, especially regarding wiretapping, search and confiscation permits.

RESEARCH METHODS

The research methods used are normative⁶ juridical and empirical juridical on law which will produce theories about the existence and function of law in society, as well as the changes that occur in the process of social change⁷. Primary data is data collected directly by researchers from the source of the question. Data is obtained directly from the community, subjects studied at institutions, or community groups, direct actors who can provide information to researchers known as respondents and informants. Secondary data⁸ consists of primary, secondary and tertiary legal materials⁹. The research data that has been collected is then analyzed using descriptive analysis methods.¹⁰

DISCUSSION

Wiretapping is an effective technological tool for uncovering systematic crimes, such as corruption, narcotics, or other transnational crimes.¹¹ The authority of the Corruption Eradication Commission (KPK) in conducting wiretapping is regulated in Article 12 paragraph (1) of the Corruption Eradication Commission (KPK) Law, which states the authority of the Corruption Eradication Commission (KPK) in carrying out investigative, investigation and prosecution duties, namely "a . wiretapping and recording conversations;...". Wiretapping results serve as clue evidence as stipulated in Article 26A of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. This special provision deviates from the Criminal Procedure Code, which does not mention wiretapping results as evidence.

However, the Law on the Corruption Eradication Commission (KPK) does not regulate the procedures for how the Corruption Eradication Commission (KPK) carries out this wiretapping authority. In fact, wiretapping has the potential to violate human rights (HAM). The 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) protects the right to privacy. Article 28F of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of

⁵ Kompas, 16 December 2009.

⁶ Muhammad Aini, Anis Mashdurohatun, Fahmi Al-Amruzi, The Ideal Concept of The Provision of Substitute Heirs In Inheritance Law According to Compilation of Islamic Law Based on The Justice Value, International Journal of Business, Economics and Law, Vol. 19, Issue 5 (August), 2019, pp. 250-257. See too Muhammad Fahrudin, Denny Kusuma, Anis Mashdurohatun, Islamic Banking Judicial Review in Accordance with Sharia Principles, Jurnal Akta, Volume 6 Issue 1, March 2019, pp. 93-98. See too Peter Mahmud Marzuki, Legal Research, (Jakarta: Kencana, 2014), p. 47. See too Anis Mashdurohatun, Ariy Khaerudin, Teguh Prasetyo, Intellectual Property Protection of Indigenous Peoples in Indonesia: Quo Vadis?, Sociological Jurisprudence Journal, Volume. 43. Issue. 1. 2020, pp. 1-7.

⁷ Soetandjo Wignjosoebroto, Social/Nondoctrinal Research Methods for Studying Law in its Concept as a Social Reality, Epsitema Digest, Volume 3/2013, p. 13.

⁸ Soerjono Soekanto, Introduction to Legal Research, (Jakarta: University of Indonesia, 1986), p. 11. See too Anis Mashdurohatun, & Gunarto, Trademark Legal Protection against SMEs in Enhancing Global Competitiveness Based on the values of Pancasila, 2nd International Conference on Indonesian Legal Studies (ICILS 2019), Advances in Social Science, Education and Humanities Research, Atlantis Press. volume 363, 2019, pp. 93-99. See too Faisal Sadad, Anis Mashdurohatun, & Gunarto, The Ideal Regulatory Construction Of Jointly Owned Waqf Land Based On Justice Values, Journal of Islamic, Social, Economics and Development (JISED), Volume: 4 Issues: 17 [March, 2019] pp. 89 - 103]. See too Anis Mashdurohatun, Transfer of Intellectual Property Rights (Studies on the Division of Joint Property (Gono-gini) Post-Divorce), International Conference on Law Reform (INCLAR 2019), Atlantis Press 2019, pp. 70-75.

⁹ Suratman and H. Phillips Dillah, Legal Research Methods, (Bandung: Alfabeta, 2013), p. 66.

¹⁰ Anis Mashdurohatun, Andri Winjaya Laksana, HM Ali Mansyur, Valuation Method of Intellectual Property Rights for Copyright Products of Small and Medium Enterprises as Objects of Credit Guarantees Benefit-Based in the Digital Era, 1st UMSurabaya Multidisciplinary International Conference 2021 (MICon 2021), Atlantis Press 2023, pp. 72-83.

¹¹ Syifa Fachrunisa, "Penyadapan sebagai Bentuk Upaya Paksa dalam Hukum Acara Pidana di Indonesia," Jurnal Studi Hukum Pidana, Volume 1, No. 1, Periode Januari-Juni 2021, page. 38.

Indonesia) states "Everyone 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 using all kinds of available channels."

Referring to the Constitutional Court Decision No. 006/PUU-I/2003 concerning Application for Review of Law Number 30 of 2002 concerning the Commission for the Eradication of Corruption Crimes against the 1945 Constitution¹² of the Republic of Indonesia (UUD NRI 1945), MK Decision No. 012-016-019/PUU-IV/2006 concerning Application for Review of Law Number 30 of 2002 concerning the Corruption Eradication Commission against the 1945 Constitution of the Republic of Indonesia, and Constitutional Court Decision No. 5/PUU-VIII/2010 concerning Application for Review of Law Number 11 of 2008 concerning Information and Electronic Transactions, it is known that the authority to wiretapping by the Corruption Eradication Commission (KPK) is constitutional, because it is based on Article 28J paragraph (2) of the State Constitution Republic of Indonesia 1945 (1945 Constitution of the Republic of Indonesia) In 1945 the right to privacy can be limited by law. However, to prevent possible abuse of the authority to wiretapping and recording, the Constitutional Court is of the opinion that it is necessary to establish regulations that regulate the terms and procedures for such wiretapping and recording. The Constitutional Court considers that there is a need for a special law that regulates wiretapping in general and the procedures for wiretapping for each authorized institution. The Constitutional Court in the Decision of the Constitutional Court No. 5/PUU-VIII/2010 states that the absence of a single rule regarding procedural law and/or wiretapping procedures has caused the Petitioners' right to privacy to be threatened among other people. Based on this, the Constitutional Court is of the opinion to form a single rule regarding procedural law and/or procedures for wiretapping, which contains the following requirements: 1) the existence of an official authority designated in the law to grant permission for wiretapping; 2) there is a guarantee of a definite time period for conducting wiretapping; 3) restrictions on handling of wiretapping material; and 4) restrictions on people who can access wiretapping.¹³

The establishment of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, one of which accommodates the provisions on wiretapping procedures, namely that wiretapping carried out by the Corruption Eradication Commission (KPK) must first ask for permission. written from the Supervisory Board. However, with the Constitutional Court canceling the authority of the Supervisory Board to grant wiretapping permits by the Corruption Eradication Commission (KPK), the question arises as to how wiretapping permits are regulated by the Corruption Eradication Commission (KPK) after the Constitutional Court Decision No. 70/PUU-XVII/2019? Based on this, the problems studied in this article are first, what are the legal politics of regulating wiretapping permits?; second, what are the provisions for wiretapping permits by the Corruption Eradication Commission (KPK); and third, how will the provisions for wiretapping permits be regulated in the future? This study is important because wiretapping has the potential to violate human rights, therefore further regulation is needed regarding the conditions and procedures for wiretapping as mandated by the Constitutional Court Decision, one of which requires permission. Meanwhile, the Constitutional Court Decision No. 70/PUU-XVII/2019 revokes the provisions on wiretapping permits by the Corruption Eradication Commission (KPK) from the Supervisory Board.

The Corruption Eradication Commission (KPK) always raises debate regarding the need for a wiretapping permit. The Corruption Eradication Commission (KPK), as one of the law enforcement agencies that is given special authority to carry out wiretapping in corruption cases, is considered to be ineffective in its performance if the requirement to obtain court permission to carry out wiretapping is actually implemented. This is because the contribution of wiretapping to the law enforcement process at the Corruption Eradication Commission (KPK) is very large. The proof is that there were 93 Arrest Operations (OTT) with a total of 324 suspects. Apart from that, many cases of corruption that have caused fantastic financial losses to the state have been revealed through wiretapping by the Corruption Eradication Commission (KPK). However, another thing that makes wiretapping by the Corruption Eradication Commission (KPK) a polemic is the human rights violations that are prone to occurring in wiretapping. Wiretapping from a human rights perspective is a form of human rights violation, namely the right to privacy, however, wiretapping can be carried out as a form of legal limitation on the protection of human rights provided that it meets certain conditions and is based on law (law) so as not to give rise to abuse of authority. and guarantee human rights.¹⁴ Law Number 30 of 2002 concerning the Corruption Eradication Commission does not regulate in detail the rules or restrictions regarding procedures for implementing wiretapping. This problem can create abuse of authority from responsible parties within the Corruption Eradication Commission. After legal reforms through Law Number 19 of 2019, restrictions were found that applied to the Corruption Eradication Commission in carrying out its authority in wiretapping. These restrictions are contained in Article 12, Article 12B, Article 12C, and Article 12D. These restrictions were made with the aim of preventing abuse of power on the part of the Corruption Eradication Commission (KPK).

Constitutional Court Decision No. 70/PUU-XVII/2019 which revokes the authority of the Supervisory Board in granting wiretapping permits has not solved the problem of wiretapping permits by the Corruption Eradication Commission. Based on the Constitutional Court's Decision in Case Number 006/PUU-I/2003 and Case No. 012-016-019/PUU-IV/2006 concerning Application for Review of Law Number 30 of 2002 concerning the Corruption Eradication Commission, that "to prevent possible abuse of authority for wiretapping and recording, the Constitutional Court is of the opinion that it is necessary to enact a law that regulates the requirements and the procedures for wiretapping and recording in question." As a follow-up to the two Constitutional Court Decisions, Law No. 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission was issued.

In addition, the Constitutional Court Decision No. 5/PUUVIII/2010 regarding the review of Article 31 paragraph (4) of Law Number 11 of 2008 concerning Information and Electronic Transactions states that it is necessary to establish regulations that regulate the terms and procedures for the interception and recording in question. The Constitutional Court believes that there is a

¹² Anis Mashdurohaturun, Erman Suparman, I Gusti Ayu Ketut Rachmi Handayani, Authority of the Constitutional Court in the Dispute Resolution of Regional Head Elections, *Lex Publica*, Volume.6. Issue. 1.2019.pp.52-60

¹³ Constitutional Court Decision No. 5/PUU-VIII/2010 concerning Application for Review of Law Number 11 of 2008 concerning Electronic Information and Transactions, page. 69-70.

¹⁴ Rio Alexander Gultom, Deizen D. Rompas, Herry F.D. Tuwaidan, "Judicial Review of the Legality of Wiretapping", (*Lex Privatum Journal* Vol. 9 No. 8., 2021), page. 97.

need for a special law that regulates wiretapping in general and the procedures for wiretapping for each authorized institution. This is to prevent possible abuse of the authority to wiretapping and recording. As a follow-up to the Constitutional Court's decision, a revision was made to Law Number 11 of 2008, which then resulted in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, including revising Article 31 paragraph (4) becomes "Further provisions regarding interception procedures as intended in paragraph (3) are regulated by law." In the Elucidation to Article 31 paragraph (1) wiretapping is interpreted the same as interception.

In many countries, institutions authorized to conduct wiretapping must obtain permission from institutions outside that institution. These institutions depend on the political policies of each country, some go to the courts, the Minister of State Secretary or independent institutions. In the United States (US), wiretapping requires a court order to be carried out.¹⁵ This is regulated in Title III of the Omnibus Crime Control and Safe Streets Act of 1968, Foreign Intelligence Surveillance Act of 1978, The Pen Register and Trap and Trace Devices Chapter of Title 18 in 18 U.S.C 3121-3127.

Wiretapping in the UK carried out under the Interception Communications Act 1985 must also require permission from an institution outside the institution that has the right to wiretapping, namely requesting permission from the Secretary of State or the Home Secretary, an organization responsible for law and order in the UK. This wiretapping is aimed at national security interests aimed at protecting against serious crime, the national economy or giving effect to the provisions governing international legal aid agreements.

Meanwhile, wiretapping in France is strictly regulated and must really get court permission. However, this wiretapping was supervised by an independent commission. Members of this commission are appointed by the President of France at the suggestion of the Vice President for a term of 6 years. This is different from in the Netherlands, where investigators must obtain a warrant issued by a judge. This wiretapping is intended for serious crimes such as criminal threats of more than 4 years in prison, intelligence interests, national security and national defense.

Meanwhile in Indonesia, several institutions have the authority to carry out wiretapping, including wiretapping by National Narcotics Agency (BNN) investigators which is carried out after obtaining written permission from the head of the court (Article 77 paragraph (2) of Law Number 35 of 2009). However, in urgent circumstances, wiretapping can be carried out without prior written permission from the head of the district court (Article 78 paragraph (1)). Please note, 1x24 hours later the investigator is obliged to ask the chairman of the district court for written permission regarding the wiretapping (Article 78 paragraph (2)).

In contrast to the authority of Police Investigators, Law Number 36 of 1999 concerning Telecommunications states that those who can conduct wiretapping are not investigators but telecommunications service providers. Investigators can only request wiretapping from telecommunications service providers or in other words investigators can only carry out wiretapping indirectly. Telecommunications service providers can conduct wiretapping directly and after carrying out the wiretapping, the results of the wiretapping will be given to the investigator who made the wiretapping request. In carrying out wiretapping, Polri investigators must pay attention to the requirements. One of the important things in these requirements is the existence of control, both from the agency itself (Polri) and from other agencies such as the courts. This is very different from the case with the Corruption Eradication Commission (KPK), which can carry out direct wiretapping actions. The Corruption Eradication Commission (KPK) can carry out wiretapping without permission from the Chief Justice.¹⁶

The Attorney General's Office also has the authority to conduct wiretapping. Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia has strengthened the legal basis for the Prosecutor's Office in conducting wiretapping. Article 30C of the Law states that "In addition to carrying out the duties and authority as intended in Article 30, Article 30A and Article 30B of the Prosecutor's Office: ... i. carry out wiretapping based on special laws that regulate wiretapping and organize monitoring centers in the field of criminal acts." This provision suggests that it is necessary to establish a special law regarding wiretapping, in addition to the mandate of the Constitutional Court's decision.

Wiretapping is not actually listed as a coercive measure in criminal procedural law according to Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP). However, there are several criminal acts that require wiretapping, for example in handling special criminal acts, which according to procedural law are a form of forced effort to obtain information which will later be used as evidence in the examination process at trial.

Forced efforts in the process of enforcing criminal law are regulated in law, one of which is the Criminal Procedure Code. Forms of coercive measures according to the KUHAP are arrest (Article 16-Article 19 KUHAP), detention (Article 20-Article 31 KUHAP), search (Article 32-Article 37 KUHAP), confiscation (Article 38-Article 46 KUHAP), and examination of documents. (Article 47-Article 49 of the Criminal Procedure Code).

In investigating special criminal acts, such as criminal acts of corruption, and distribution and abuse of narcotics, investigators in the investigation process can conduct wiretapping on the communication devices of someone who is suspected of being related to the case or another party as a form of case development. Wiretapping requests must be supported with clear reasons. Such actions can be categorized as a form of coercion that can be carried out by law enforcement officials in the criminal justice system whose arrangements are outside the Criminal Procedure Code.

In addition to criminal acts of corruption and narcotics, wiretapping can be carried out by law enforcement officials in handling cases of terrorism, trafficking in persons and money laundering. In connection with the interests of criminal justice, several institutions have the authority to conduct wiretapping, namely the Indonesian National Police, the Indonesian Attorney General's Office, the National Narcotics Agency, and the Corruption Eradication Commission. Meanwhile, the arrangements regarding the procedures for wiretapping are still diverse and vary in each institution authorized to carry out wiretapping.

In the Constitutional Court Decision No. 05/PUUVIII/2010, the Court is of the opinion that wiretapping procedures must be regulated in a special law. MK then quoted Decision No. 006/PUU-I/2003:

¹⁵ Reda Manthovani, *Tapping vs. Privacy*, (Jakarta: PT Bhuana Ilmu Populer, 2015), page. 148..

¹⁶ Lendo Theo Engelbert, "The Authority of Police Investigators in Carrying Out Wiretapping in View of Law Number 36 of 1999," *Lex Privatum*, Vol. V, No. 3, May 2017, page. 37-38.

"Because wiretapping and recording of conversations is a limitation of human rights, where such restrictions can only be made by law, as determined by Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia). It is this law that must then define, among other things, who is authorized to issue wiretapping and recording orders and whether orders to wiretapping and recording conversations can only be issued after sufficient initial evidence has been obtained, which means that wiretapping and recording conversations are to complete evidence, or whether wiretapping and recording of conversations can already be carried out to find sufficient initial evidence. In accordance with the instructions of Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia (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.

Because wiretapping is included in coercive measures in the criminal justice process, ideally the procedures should be included in the Criminal Procedure Code. However, currently the Criminal Procedure Code has not regulated this matter, the Draft Law (RUU) on Criminal Procedure Code (RUU KUHAP) has not been discussed again. The Criminal Procedure Code Bill was discussed by the Indonesian Parliament and the Government in 2013. The Criminal Procedure Code Bill was intended as a codification of criminal procedural law which should become the main guideline for special criminal procedural law regulated in various other laws. The philosophical basis for reforming criminal procedural law is prioritizing the interests of the nation and the state and limiting the authority of state instruments (especially investigators and public prosecutors) proportionally and aims to provide more legal certainty, law enforcement, public order, social justice, and protection law and human rights, both for suspects, defendants, witnesses and victims, for the sake of the implementation of a rule of law as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

The latest KUHAP states that wiretapping is included in the duties and powers of investigators in Article 7 letter d, that "Investigators have the duties and powers: ... d. carry out arrests, detentions, searches, confiscations, mail checks and wiretapping." The composition of the duties and authorities can be said that wiretapping is the last forced effort, if other forced efforts have not been able to provide sufficient evidence to continue the judicial process of a crime. Apart from that, because it is the duty and authority of investigators, wiretapping is carried out at the investigation stage.

Reasonable reasons in the implementation of wiretapping are interpreted as having clear reasons accompanied by sufficiently convincing evidence to carry out wiretapping, it should not be carried out only for reasons of suspicion. In fact, if it is understood carefully, the essence of law enforcement is the guarantee of human rights protection against all kinds of actions that might happen, are happening, or have already happened. This understanding brings a commitment that law enforcement should not be carried out to reduce the human rights of other people, even if it is a person who is suspected of being a perpetrator or a suspect who has been caught red-handed. Wiretapping must also be carried out on the basis of clear reasons for indications of a crime to be committed based on sufficiently strong and justifiable evidence. Considering the specificity of wiretapping which carries the risk of human rights violations if it is misused, wiretapping must be included in investigative actions, not investigations.

Furthermore, in the latest KUHAP, wiretapping arrangements are contained in two articles, namely Article 83 and Article 84. Wiretapping can only be carried out on discussions related to serious criminal acts or it is strongly suspected that a serious crime will occur, which cannot be disclosed if wiretapping is not carried out (Article 83 paragraph (1)). These serious criminal acts include:

1. Regarding state security;
2. Deprivation of liberty/kidnapping;
3. Theft with violence;
4. Blackmail;
5. Threats;
6. Trafficking in persons;
7. Smuggling;
8. Corruption;
9. Money laundering;
10. Counterfeiting money;
11. Immigration;
12. Regarding explosives and firearms;
13. Terrorism;
14. Serious violations of human rights;
15. Psychotropics and narcotics;
16. Rape;
17. Murder;
18. Mining without a permit;
19. Fishing without a permit in waters; And
20. Illegal logging.

The criteria for this type of serious crime are not clear. In cases of rape, for example, is wiretapping necessary? Clear criteria should be determined, for example extraordinary crimes, and these crimes cannot be uncovered if wiretapping is not carried out.

The new Criminal Procedure Code also regulates wiretapping permits. Wiretapping can only be carried out by an investigator on a written order from the local investigator's superior after obtaining a permit from the Preliminary Examining Judge (Article 83 paragraph (3)). To obtain the permit, the public prosecutor appears before the Preliminary Examining Judge together with the investigator and submits a written request to conduct wiretapping to the Preliminary Examining Judge, attaching a written statement from the investigator regarding the reasons for the wiretapping (Article 83 paragraph (4)). The Preliminary Examining Judge issues a permit to conduct wiretapping after examining the written application (Article 83 paragraph (5)).

The Preliminary Examining Judge is a new institution mentioned in the KUHAP Bill. What is meant by Preliminary Examining Judges are officials who are authorized to evaluate the course of investigations and prosecutions, and other powers specified in this Law (Article 1 number 7). Because the position of the Preliminary Examining Judge has only one office at or near the state detention center, obtaining a wiretapping permit will take a long time. Rusli Muhammad also criticized the terms of this

permit, who said that a permit to carry out wiretapping from the Preliminary Examining Judge would be inconvenient because it required speed in uncovering crimes.¹⁷

Criticism of this provision was also expressed by Amien Sunaryadi. Amien said the conditions for obtaining a permit were too bureaucratic, wiretapping was required for serious crimes and was carried out quickly. With a mechanism like this, it is feared that the wiretapping will fail because the person who will be the target of the wiretapping hastily knows about the wiretapping plan against him.¹⁸

Based on this, the wiretapping provisions in the new Criminal Procedure Code still cause problems and it is likely that there will be obstacles in its implementation by law enforcement officials. Therefore, the quick action that can be taken is to draft a law regarding wiretapping.

It is hoped that Commission III of the DPR RI through its legislative duties will try to regulate the issue of wiretapping authority in the Draft Law (RUU) on Wiretapping, so that it is non-discriminatory and efficient. One of the important points that will be regulated in the Bill on Wiretapping is regarding permission for wiretapping by the court. Currently, the mechanism for wiretapping requests is carried out in various ways because it is regulated by different laws. Some require court permission, through superiors, or directly to conduct wiretapping¹⁹

The Draft Law (RUU) on Wiretapping is included in the 2019-2024 National Legislation Program List. However, it is not included in the 2022²⁰ Priority Draft Bill. Even so, Commission III of the DPR RI through its legislative duties is preparing a Draft Law (RUU) on Wiretapping, which among other things regulates the authority to wiretapping. This bill seeks to improve wiretapping powers so that they are non-discriminatory and efficient. This draft law (RUU) will provide uniformity regarding wiretapping mechanisms which are currently scattered in various laws, as well as in relation to differences in method and timeframe.²¹

One of the provisions in the Bill on Wiretapping is related to the requirement that there be a court order to carry out wiretapping. Because wiretapping is also part of the inquiry and investigation process, of course its implementation also requires permission or court approval/validation in the form of a "written order".²²

Because it is part of the inquiry and investigation process, ideally wiretapping also needs to have a means of control as well as coercive measures regulated in the Criminal Procedure Code, such as confiscation, search, arrest and detention, that is, in addition to requiring permission/ratification from the court, it is also controlled by Pretrial Institution.

Regarding wiretapping which must have the permission of the head of the court, it creates resistance if wiretapping by the Corruption Eradication Commission (KPK) also has to have permission from the court. It is feared that this will hamper the performance of the Corruption Eradication Commission (KPK) in its efforts to eradicate corruption, especially involving judges. Many judges have been arrested by the Corruption Eradication Commission (KPK) for being involved in corruption, so the public is worried that this permit provision will actually thwart efforts to eradicate corruption.

In other countries, as previously mentioned, all wiretapping must be carried out with permission from outside the agency that has wiretapping authority. The procedures for granting wiretapping permits by the court are as follows:

1. Law enforcement officials who will carry out wiretapping have been appointed or determined by the superiors of the said law enforcement officers.
2. There is sufficient preliminary evidence and reasons for wiretapping, such as information from the public, as consideration for the court in granting permission for wiretapping.
3. The application for and determination of a permit only states the type of crime and the duration of the wiretapping being applied for.

With the procedures for granting wiretapping permits by the court like this, there is no need to worry about the failure of wiretapping in efforts to eradicate corruption. The existence of requirements for court decisions in the implementation of wiretapping by law enforcement officials, including the Corruption Eradication Commission (KPK), is a form of checks and balances in law enforcement. This is also intended to prevent abuse of authority. Restrictions on privacy rights are carried out with conditions regulated by law regarding wiretapping, so that human rights violations do not occur. Wiretapping for urgent reasons can be carried out without having to obtain court permission, but the wiretapping in question must still require approval/authorization from the court. Therefore, the DPR RI and the Government need to prioritize discussion of the Draft Law (RUU) on Wiretapping, as an implementation of the Constitutional Court Decision which mandates the formation of a special law on wiretapping.

Considering that the Constitutional Court's decision mandates the existence of a separate law regulating wiretapping, the People's Representative Council of the Republic of Indonesia and the Government need to prioritize discussion of the Bill on Wiretapping. The legal basis for wiretapping applies to all law enforcement officers who have the authority to carry out wiretapping, so that legal certainty and justice are realized for all parties.

¹⁷ Rusli Muhammad, FGD Research on "Regulation of Wiretapping in Criminal Procedure Law in Indonesia", UII Yogyakarta, 22 May 2014, Puteri Hikmawati, Wiretapping in Law in Indonesia Perspective of *Ius Constitutum* and *Ius Constituendum*, (Jakarta: Center for Studies, Data and Information Processing of the Secretariat General DPR RI and Azza Graphics), 2015, page. 64.

¹⁸ Amien Sunaryadi, FGD Research on "Regulation of Wiretapping in Criminal Procedure Law in Indonesia", Jakarta, 16 April 2014.

¹⁹ Arsul Sani, "The Urgency of the Wiretapping Bill: Due Process of Law on Wiretapping in Indonesia," Paper, delivered at a focus group discussion with the theme "Seeking Input, Views and Opinions on the Bill on Wiretapping", organized by Commission III DPR RI, Jakarta, 15 December 2021, page. 4-5.

²⁰ Decree of The Indonesian House of Representatives Number 8/DPR RI/II/2021-2022 concerning the National Legislation Program for the 2022 Priority Law Draft and the National Legislation Program for the Third Amendment Law Draft for 2020-2024 dated December 7 2021.

²¹ Arsul Sani, "The Urgency of the Wiretapping Bill: Due Process of Law on Wiretapping in Indonesia", Paper, delivered at a focus group discussion with the theme "Seeking Input, Views and Opinions on the Bill on Wiretapping", organized by Commission III DPR RI, Jakarta, 15 December 2021, page. 3.

²² Andi Samsan Nganro, "Mechanism for Granting Wiretapping Permits within the Framework of the Integrated Criminal Justice System", delivered in a focus group discussion, with the theme "The Urgency of the Bill on Wiretapping in a Law Enforcement System Based on Due Process of Law Principles", Jakarta, 15 December 2021.

Article 12C Law Number 19 Of 2019 Concerning Second Amendment To Law Number 30 Of 2002 Concerning Corruption Eradication Commission, Article 12 of the Corruption Law, reads that: (1) Investigators and investigators report the wiretapping as referred to in Article 12 paragraph (1) which is in progress to the Head of the Corruption Eradication Commission periodically. (2) Wiretapping as referred to in Article 12 paragraph (1) that has been completed must be accounted for to the Leaders of the Corruption Eradication Commission and the Supervisory Board no later than 14 (fourteen) working days after the wiretapping was completed. In practice, this article has weaknesses, namely: The phrase "accountable to the Supervisory Board" in Article 12C paragraph (2) of the Corruption Eradication Commission (KPK) Law is not based on Pancasila justice values and does not have binding legal force. The new legal concept, Article 12C becomes reads that: (1) Investigators and investigators report the wiretapping as referred to in Article 12 paragraph (1) which is in progress to the Head of the Corruption Eradication Commission periodically. (2) Wiretapping as referred to in Article 12 paragraph (1) that has been completed must be accounted for to the Head of the Corruption Eradication Commission and notified to the

CONCLUSION

Regulations on the Authority for Wiretapping by the Corruption Eradication Commission in Handling Corruption Crimes Currently do not meet the Value of Justice, because the authority of the Corruption Eradication Commission (KPK) in carrying out wiretapping for criminal acts of corruption is as regulated in the provisions of Article 12 of Law Number 19 of 2019 concerning amendments regarding Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK) has not been able to run optimally because there is no special law regarding wiretapping and evidence of wiretapping has not been regulated as valid evidence in the Criminal Procedure Code. Reconstruction of the Regulation on Wiretapping Authority by the Corruption Eradication Commission in Handling Corruption Crimes Based on Justice Values is by strengthening the authority of the Corruption Eradication Commission to carry out wiretapping authority to prevent and eradicate criminal acts of corruption through the reconstruction of Article 12C of Law Number 19 of 2019 concerning amendments to the Law. Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK).

Bibliography

- Amien Sunaryadi, FGD Research on "Regulation of Wiretapping in Criminal Procedure Law in Indonesia", Jakarta, 16 April 2014.
- Andi Samsan Nganro, "Mechanism for Granting Wiretapping Permits within the Framework of the Integrated Criminal Justice System", delivered in a focus group discussion, with the theme "The Urgency of the Bill on Wiretapping in a Law Enforcement System Based on Due Process of Law Principles", Jakarta, 15 December 2021.
- Anis Mashdurohaturun, & Gunarto, Trademark Legal Protection against SMEs in Enhancing Global Competitiveness Based on the values of Pancasila, 2nd International Conference on Indonesian Legal Studies (ICILS 2019), Advances in Social Science, Education and Humanities Research, Atlantis Press. volume 363,2019.
- Anis Mashdurohaturun, Andri Winjaya Laksana, HM Ali Mansyur, Valuation Method of Intellectual Property Rights for Copyright Products of Small and Medium Enterprises as Objects of Credit Guarantees Benefit-Based in the Digital Era, 1st UMSurabaya Multidisciplinary International Conference 2021 (MIcon 2021), Atlantis Press 2023.
- Anis Mashdurohaturun, Ariy Khaerudin, Teguh Prasetyo, Intellectual Property Protection of Indigenous Peoples in Indonesia: Quo Vadis?. Sociological Jurisprudence Journal, Volume. 43. Issue. 1.2020.
- Anis Mashdurohaturun, Erman Suparman, I Gusti Ayu Ketut Rachmi Handayani, Authority of the Constitutional Court in the Dispute Resolution of Regional Head Elections, Lex Publica, Volume.6. Issue. 1.2019.
- Anis Mashdurohaturun, Transfer of Intellectual Property Rights (Studies on the Division of Joint Property (Gono-gini) Post-Divorce), International Conference on Law Reform (INCLAR 2019), Atlantis Press 2019.
- Arsul Sani, "The Urgency of the Wiretapping Bill: Due Process of Law on Wiretapping in Indonesia," Paper, delivered at a focus group discussion with the theme "Seeking Input, Views and Opinions on the Bill on Wiretapping", organized by Commission III People's Representative Council of the Republic of Indonesia, Jakarta, 15 December 2021.
- Arsul Sani, "The Urgency of the Wiretapping Bill: Due Process of Law on Wiretapping in Indonesia", Paper, delivered at a focus group discussion with the theme "Seeking Input, Views and Opinions on the Bill on Wiretapping", organized by Commission III DPR RI, Jakarta, 15 December 2021.
- Citra Mandiri, Collection of Legislative Regulations of the Republic of Indonesia (Volume III), Jakarta: CV. Independent Image, 2002.
- Constitutional Court Decision No. 5/PUU-VIII/2010 concerning Application for Review of Law Number 11 of 2008 concerning Electronic Information and Transactions.
- Decision of the People's Representative Council of the Republic of Indonesia Number 8/DPR RI/II/2021-2022 concerning the National Legislation Program for the 2022 Priority Law Draft and the National Legislation Program for the Third Amendment Law Draft for 2020-2024 dated December 7 2021.
- Faisal Sadad, Anis Mashdurohaturun, & Gunarto, The Ideal Regulatory Construction Of Jointly Owned Waqf Land Based On Justice Values, Journal of Islamic, Social, Economics and Development (JISED), Volume: 4 Issues: 17 [March, 2019..
- Kompas, 16 December 2009.
- Kristian, "The Urgency of Corporate Criminal Accountability", 44th Year Journal of Law and Development No. 4, October – December 2013.
- Lendo Theo Engelbert, "The Authority of Police Investigators in Carrying Out Wiretapping in View of Law Number 36 of 1999," Lex Privatum, Vol. V, No. 3, May 2017. Rusli Muhammad, FGD Research on "Regulation of Wiretapping in Criminal Procedure Law in Indonesia", UII Yogyakarta, 22 May 2014, Puteri Hikmawati, Wiretapping in Law in Indonesia Perspective of Ius Constitutum and Ius Constituendum, (Jakarta: Pusat Pengajian, Data and Information

Processing by the Secretariat General of the People's Representative Council of the Republic of Indonesia and Azza Graphics), 2015.

Moeljatno, Principles of Criminal Law, Jakarta: Rineka Cipta, 2002.

Muhammad Aini, Anis Mashdurohatun, Fahmi Al-Amruzi, The Ideal Concept of The Provision of Substitute Heirs In Inheritance Law According to Compilation of Islamic Law Based on The Justice Value, International Journal of Business, Economics and Law, Vol. 19, Issue 5 (August), 2019.

Muhammad Fahrudin, Denny Kusuma, Anis Mashdurohatun, Islamic Banking Judicial Review in Accordance with Sharia Principles, Jurnal Akta, Volume 6 Issue 1, March 2019.

Peter Mahmud Marzuki, Legal Research, Jakarta: Kencana, 2014.

Reda Manthovani, Tapping vs. Privacy, (Jakarta: PT Bhuana Ilmu Populer, 2015), page. 148.

Rio Alexander Gultom, Deizen D. Rompas, Herry F.D. Tuwaidan, "Judicial Review of the Legality of Wiretapping", Lex Privatum Journal Vol. 9 No. 8., 2021.

Soerjono Soekanto, Introduction to Legal Research, Jakarta: University of Indonesia, 1986.

Soetandjo Wignjosoebroto, Social/Nondoctrinal Research Methods for Studying Law in its Concept as a Social Reality, Epsitema Digest, Volume 3/2013.

Suratman and H. Philips Dillah, Legal Research Methods, Bandung: Alfabeta, 2013.

Syifa Fachrunisa, "Wiretapping as a Form of Coercion in Criminal Procedure Law in Indonesia," Journal of Criminal Law Studies, Volume 1, No. 1, January-June 2021.

Wawan Setiyawan, Anis Mashdurohatun, The Reforming Of Money Politics Cases In Election Law As Corruption Crime, Law Development Journal, Volume.3.Issue.3.2021.

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