

KPK Authority Review in the Impact of Corruption Eradication

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Abstract: The unclear wiretapping mechanism and no limits of Corruption Eradication Commission (KPK)'s authority in wiretapping have led to public discourse that the authority has violated the private rights. KPK itself in wiretapping has no restrictions. KPK investigators see there is a criminal act of corruption or still a criminal act of corruption then KPK investigators have the right to wiretap. KPK is an institution established by the Indonesian government in 2003 under the legal basis of Article 43 of Corruption Law. KPK was formed to maximize in the case of eradicating corruption crimes in Indonesia that have been rampant, for that KPK is authorized to intercept as regulated in Article 12 of the Corruption Eradication Commission Law. KPK tapping authority allegedly violates human rights because there are no rules that regulate in more detail and clear in wiretapping. This research will analyze the authority of KPK super power so as to make KPK has no restrictions in carrying out its authority, especially in wiretapping so feared misuse of authority. Therefore, it is necessary to limit the KPK in wiretapping. The KPK essentially violates the right of personal freedom, but it is permissible because there are limits to private rights that are suspected of alleged corruption, the purpose of wiretapping for the interest of the state and the rules are regulated in legislation.

Keywords: Tapping, Corruption Eradication, Crime

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I. INTRODUCTION

The polemic of wiretapping authority by the KPK reminds the polemic about the existence of the Corruption Court. This leads to the judicial review of the Constitutional Court (MK) as stipulated in the Decision of the Constitutional Court on December 19, 2006. This stems from the birth of a new Law on Corruption Eradication (Law No. 31 Year 1999 and Law No. 20 Year 2001) and followed by the birth of Law no. 30 Year 2002 about Corruption Eradication Commission (KPK). After that, the handling of corruption began to look stronger because of the presence of KPK and corruption court. Just like a corrupt court polemic, this tapping issue also contradicts two pro and con parties [8]. There is a view that wiretapping must be regulated and implemented after first obtaining permission from the court, so this arrangement is assessed as an effort to weaken KPK. This view needs to be supported by the argumentation by showing its advantages, both from the constitutional point of task of investigation, investigation, and prosecution as referred to in Article 6 letter c, the Corruption Eradication Commission is authorized to intercept and record the conversation". However, the Act provides protection to the injured party for the conduct of investigations, investigations, and prosecutions that are contrary to law. Article 63 paragraph (1) of Law no. "If a person is disadvantaged as a result of an investigation, investigation, and prosecution conducted by the Corruption Eradication Commission in contravention of this law or with applicable law, the person concerned shall be entitled to file a lawsuit for rehabilitation and/or compensation."

II. THEORIES

The Criminal Code (KUHP) which prevailed since 1918 until now does not contain the word wiretapping. Similarly, the Indonesian Criminal Procedure Code (Criminal Procedure Code), which was enacted in 1981 did not recognize wiretapping institutions in the process of investigation, investigation, and prosecution, as well as the examination of cases in court [5][10]. Although the Criminal Code and Criminal Procedure Code do not regulate it, it turns out that wiretaps have been mentioned in several laws and regulations. Law no. 36 Year 1999 concerning Telecommunication for example, expressly prohibits any person engaging in eavesdropping on information channeled through telecommunication networks of any kind (Article 40). What is meant by intercepts in this Article is "the activity of installing any equipment or enhancements in the telecommunications network for the purpose of obtaining information by unlawful means." Information owned by a person is a private right that must be protected so that tapping should be prohibited (Elucidation of Article 40).

Wiretapping began to receive attention, and the international public spotlight stems from the stormy events that occurred in the United States in the 1970s, the act of one of the candidates for President of the United States named Richard Milhous Nixon who wipe a tapping action against his political opponent at the Watergate Hotel. Also, from historical context, the case of wiretapping or other people intercepting acts began to be known at the beginning of telecommunication technology was made, precisely around the 1840s by using the telegraph. One of the most famous cases of wiretapping at the time was the case reported in 1867, the tapping of a telegraph operator by a Wall Street stockbroker working with the Western Union. The telegraph message was subsequently replaced with false data; it was reported that financial and other bankruptcies were hitting the company that allegedly had bought shares on the New York Stock Exchange. With the "information war," speculators buy stocks that plummet from victims [6][7].

The issue arises against the incomplete procedural laws governing wiretapping [3][4]. Currently, wiretapping arrangements can be found scattered, at least in 10 (ten) laws. One of them, Law no. 11 of 2008 on Information and Electronic Transactions (ITE) explicitly regulates wiretapping. The meaning of interception is an activity to listen to, record, deflect, alter, inhibit, or record the transmission of electronic information or documents that are not public, either using a wired communications network or a wireless network. In the UUIITE, wiretapping is prohibited except wiretaps carried out in the context of law enforcement at the request of the police, prosecutors or other law enforcement agencies established by law. However, the ITE Act does not regulate its procedures. Article 31 paragraph (4) of the UUIITE delegates the existence of government regulations to regulate the procedures for wiretapping further [11][12][13].

The prohibited actions related to intercepts are as follows:

1. Unlawfully with technical aids listening to talks going on inside or outside of a home, a room or a covered yard, or on a telephone while not being a participant in the conversation (Article 300).
2. Unlawfully install technical aids at a particular place for the tool to hear or record a conversation (Article 301).
3. Unlawfully possesses goods which are known or reasonably suspected to contain the results of the speech obtained by listening or recording (Article 302).
4. Utilize opportunities gained by trickery, record images using one or more technical aids in a house or room not open to the public to the detriment of the person's legal interest (Article 303 a).
5. Having pictures that are known or reasonably suspected to be obtained through acts as referred to in letter a (Article 303 letter b).
6. Broadcast the images referred to in letter b. (Article 303 letter c).

The renewal of the criminal procedure law is intended to provide greater legal certainty, law enforcement, law order, community justice, and the protection of the law and human rights, both for suspects, defendants, witnesses and victims for the sake of the implementation of the rule of law [9].

III. RESULT AND DISCUSSION

3.1 KPK Legal Aspects of Wiretap Actions

One of the impacts of such technological advances is the issue of proving cases of crime, now the perpetrators in committing crimes have used many advanced technological means. In disclosing and proving the unconventional crime is required other evidence than that specified in the Criminal Procedure Code. For example, data or information stored in electronic storage media can be used as new evidence. It is attempted to be able to detect the perpetrators of crime, and further special efforts or techniques are required. The authority for investigators and investigators in wiretapping has been regulated regarding dealing. However, in the wiretapping process in the field, the problem of tapping becomes the most talked about and debated the issue at the moment. It is because of wiretapping concerning the privacy rights of a person and all sorts of forms related to the execution of one's duties. Moreover, the current legal instruments that form the basis of law in the form of law has not been set about interception comprehensively, but the arrangement is spread in various laws separately. The development of the international world including in Indonesia has entered a new civilization that is in information technology based on a digital environment. The development of increasingly sophisticated technology, of course, will lead to increased quantity and quality of crime, from conventional to advanced crimes. Conducted with a sophisticated modus operandi so that in the law enforcement process required special techniques or procedures to uncover the crime.

It is realized that normatively, wiretaps have not been regulated by a separate law. While in practice continue to cause controversy about the tapping procedure. The arrangements are still scattered in various laws. So there is no general guidance for police officers, prosecutors, BNN, KPK, in wiretapping, each tapping technique by the commands of each institution. Wiretaps are essentially prohibited by law from violating a person's privacy rights. Wiretaps make a person's life not free, always in a state of fear and personal liberty is taken away, whereas everyone has their rights. The right to freedom from fear and others, as stated in Article

28F and Article 28G Paragraph (1), the Constitution of the Republic of Indonesia (from now on referred to as the 1945 Constitution of the Republic of Indonesia). As reaffirmed in the elucidation of Article 31 paragraph (1) of Law No. 1 of 2008 on UUI states that what is meant by interception or interception is "Activities to listen, record, deflect, alter, inhibit, or record the transmission of electronic information or documents that are not public, using either a communications cable network or a wireless network such as electromagnetic or radio frequency." According to the Explanation of the ITE Act, Article 31 states that "Interception or interception is an activity to listen, record, deflect, alter, inhibit or record the transmission of electronic information or electronic documents that are not public, such as electromagnetic emission or radio frequency."

Under Article 1 Sub-Article 1 of the EU Law, "electronic information is one or a set of electronic data, including but not limited to writing, sound, images, maps, design, photographs, electronic data interchange (EDI), electronic mail), Telegram, telex, telecopy, or the like, letters, signs, numbers, access codes, perforated symbols or perforations that have meaning or can be understood by capable persons to understand it ". Meanwhile, Article 1 Sub-Article 4 of the ITE Law states that "Electronic documents are any electronic information created, transmitted, transmitted, received or stored in analog, digital, electromagnetic, optical or the like, which can be seen, displayed or is transmitted through a computer or electronic system, including but not limited to writing, sound, images, maps, designs, photographs or the like, letters, signs, numbers, access codes or perforations that have been processed that are meaningful or understandable by people who can understand it ".

Also, the electronic system referred to in Article 1 number 5 is "a set of electronic devices or procedures that prepare, collect, process, analyze, store, display, publish, transmit / or disseminate electronic information." Meanwhile, according to Article 1 Sub-Article 7 of Regulation of the Minister of Communication and Information Technology Number: 11/PERM.KOMINFO/ 02/2006 on the Information Tapping Technique, what is meant by "tapping of information is listening, recording, or recording a conversation conducted by Enforcement Officer Legal by installing any equipment or enhancements to the telecommunication network without the knowledge of the person making the conversation or communication . "

The pros and cons of the KPK's authority have been debated, although, in the end, it came to the conclusion that corruption cases other than police investigators and prosecutors were also acknowledged by the law above the KPK acting as investigators. In the process of investigation of corruption cases by KPK, it must also keep referring to the applicable criminal procedural law in Indonesia, in this case, Law Number 8 Year 1981 on Criminal Procedure Code (from now on referred to as KUHAP). Before the investigation, of course, the KPK had to collect strong initial evidence that the case was a corruption case, and therefore the KPK was not authorized to issue a Letter of Case Investigation (SP3). There are various ways that KPK has done to obtain evidence of a corruption case, such as through phone/communication wiretap that the tapping results are used as evidence in the corruption court.

KPK in its performance has used the tapping results as evidence in criminal justice especially corruption crime which also does not close the possibility of other crime such as the criminal act of bribery as happened in Artalyta case. Some argue that interception or wiretap conducted by the KPK has violated the privacy rights of individuals as part of human rights because the Commission has entered into one's private territory. The opinion is based on the provisions of the 1958 European Convention for the Protection of Human Rights. The tapping authority granted to the KPK has nothing to do with reducing the right of citizens to secure a sense of security. Principally, wiretapping is permitted as part of the investigative action by the investigating authorities. Against a crime. The absence of clear rules does not mean that Article 12 Paragraph (1) Sub-Paragraph an of the Corruption Eradication Commission Law is contradictory to the Constitution since the real issue lies in the implementation of procedures and procedures for tapping and recording.

3.2 The Legal Strength of Tapping as a Corruption Proof

The proof is a central point in the procedural law, be it criminal, civil or other procedural law, because this is where the fate of a person is at stake in the trial. In principle, the proof begins since the existence of a legal event. The criminal procedural law itself considers that proof is the most important part. The proof is a way of convincing the judges of the truth of the proposition put forward in court in the dispute. Meanwhile, according to Nash Farid Washil that the proof presents the legal evidence in front of the court to be examined by the judges to determine a case in court. Both criminal and civil proceedings are required to provide evidence to substantiate the arguments presented in the hearing, in the positive law in Indonesia regarding the evidence contained in Article 295 HIR, among others:

1. Description of the witness
2. Letters
3. Recognition
4. Signs (instructions)

Whereas in the Criminal Procedure section 184 on the evidence there are five The evidence as follows.

1. Description of the witness
2. Expert description
3. Letter
4. Instructions
5. Defendant's description.

The legal basis of witness statements as evidence is contained in article 159 to article 174 of KUHAP and article 184 paragraph 1 letter a and article 185 KUHAP. In general, the meaning of a witness is a person who can provide information about a crime he/she has seen and experienced for the sake of the court. In article 1 point 27 of the Criminal Procedure Code (KUHAP) explaining the testimony of witnesses. One of the evidence in a criminal case in the form of witness testimony concerning a criminal event that he heard himself, he saw himself, and he experienced his own by calling the reason of his knowledge. The criminal act of corruption is a white collar crime. It means that the perpetrators are people who are educated in each field, is an extraordinary crime and very bad for a nation. It is a well-organized crime and is a crime with a new dimension. This is what makes corruption very difficult to be revealed especially to look for evidence so that the perpetrators can be tried in court.

Because of the difficulty in obtaining evidence, new methods are needed, one of which is the use of electronic evidence, especially evidence of tapping results, which is recognized as a proof of clue in corruption crime, in accordance with Law No. 20 Year 2001 regarding the amendment of Law Of Law Number 31 of 1999 concerning the criminal act of corruption Article 26 A. Legal evidence in the form of guidance as referred to in Article 188 paragraph 2 of Law Number 8 Year 1981 regarding Criminal Procedure Code, specifically for corruption offenses can also be obtained from:

- A. Other evidence of information that is spoken, transmitted, received or stored electronically with optical or similar devices.
- B. Documents, ie any recording of data or information that can be viewed, read and / or heard which can be issued with or without the aid of a means, whether written on paper, or recorded on electronic note, in the form of writing, sounds, drawings, maps, Photos, letters, signs, numbers or information that has meaning.

The tapping results used by the KPK in uncovering corruption cases that have been carried out under the provision of valid evidence will further determine the strength of the evidence. Wiretapping results conducted by the KPK so far is a tool evidence as described in Law No. 20 of 2001 on the amendment of Law No. 31 of 1999 on the crime of corruption Article 26 A above. The guidance evidence shall be used by a judge if it is not sufficient for the minimum limit of the law of proof as referred to in article 183 of the Criminal Procedure Code which reads as follows "The judge shall not impose a penalty on a person except if with at least two valid evidence he/she obtains the conviction that a criminal offense Actually happened and that the defendant was guilty of doing so".

IV. CONCLUSION

Based on the results of the above discussion it can be concluded that KPK in wiretapping essentially violates the privacy of a person because in wiretapping KPK can make a person afraid to express and uncomfortable. The tapping of KPK can also give negative impacts for people around. A person's rights may be violated because there are restrictions that are permitted to violate a person's rights. It must respect the human rights of others, and for the interest of the state or public interest and KPK investigators may violate the privacy of a person who was is committing a criminal act of corruption. The Criminal Procedure Code also provides that a person's rights may be violated and allowed by law by Articles 5 and 7 which contains the authority of investigators and investigators in the search for evidence and criminal offenses.

KPK is entitled to violate the right of personal freedom provided that the alleged perpetrators be suspected of committing corruption so that KPK is entitled to wiretap. KPK can not be said to violate the law because the process of tapping the KPK is by the Corruption Eradication Commission Law. KPK in publishing the results of interception can be said that the Commission violates the privacy of a person because it gives the negative impact for people who tapped and people around them including family. KPK in publishing the results of wiretapping is not only allegedly violates the privacy rights of a person but also violates Article 17 Permenkominfo about the dissemination of tapping results to other parties who are not related parties.

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