

The Validity of Wiretapping as Evidence in Corruption Cases

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Abstract

Corruption crimes committed by state officials in Indonesia are rampant. Therefore, the Corruption Eradication Commission (KPK), as an independent institution, has a heavy-duty to investigate the perpetrators of Corruption Crimes in Indonesia. Of course, the KPK in the trial requires strong evidence to reveal the perpetrators of special crimes, namely corruption. With this evidence, the KPK will be able to prove that the perpetrator is proven to have committed the crime of corruption. It is known that the KPK Law has just been revised, Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. Where there are changes in procedures listed in the new law. This refers to how the KPK can conduct wiretapping and obtain official permission to wiretap perpetrators who are indicated to have committed corruption crimes.

Keywords: *Wiretapping, Evidence, Corruption Crime.*

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A. INTRODUCTION

Evidence in criminal cases has a different purpose compared to civil cases because evidence in criminal cases aims to find material truth or true truth. The issue of proof becomes very crucial and central in this context. As stipulated in Article 6 paragraph (2) of the Criminal Procedure Code (KUHP), a person cannot be sentenced to punishment unless the court, based on valid evidence according to the law, has the conviction that the accused suspect can be held accountable for the actions charged.

This wiretapping action is not applied to all crimes in Indonesia, but only to Extraordinary Crimes. In this research, the criminal offence that is the focus of the problem is the crime of corruption, which has its challenges in the process of investigation and law enforcement because the perpetrators of corruption often have strong networks and are difficult to trace using conventional methods. Therefore, extra efforts are needed to conduct investigations. One of the methods used is wiretapping.

Wiretapping is an important strategy in uncovering complex corruption cases. Through wiretapping, law enforcement officials can monitor suspicious communications and transactions between corruption perpetrators, making it possible to gather strong evidence to be used in the legal process. In Indonesia, there are five State Institutions authorized to conduct wiretapping, namely the Corruption Eradication Commission (KPK), the Police, the National Narcotics Agency (BNN), the State Intelligence Agency (BIN), and the Attorney General's Office.

In an effort to arrest perpetrators of corruption, Investigators often use wiretapping methods as an extraordinary measure to uncover complex corruption cases. However, the use of wiretapping in the context of criminal law raises debates around violations of individual privacy. Wiretapping can be defined as the act of listening to, recording, or recording confidential electronic information or electronic documents, which is carried out through various mediums such as cables, communications, wireless networks, or other electronic devices.

Law Number 19 of 2019 concerning the Corruption Eradication Commission (KPK) regulates the use of wiretapping in the investigation and investigation of corruption crimes. The wiretapping authority possessed by investigators is a constitutional authority expressly granted by law. By law, investigators have the authority to use wiretaps to collect evidence and prove corruption cases in court. However, the implementation of wiretapping must be based on strong indications and sufficient preliminary evidence, and must comply with established procedures. While investigators have the authority to use wiretapping, this does not mean that they can do so without restrictions.

Clear and transparent procedures should be followed before conducting wiretaps. While wiretapping can be an effective tool in uncovering corruption cases, controversies surrounding privacy and individual human rights remain. The right of every citizen to communicate securely is protected by the 1945 Constitution. There are concerns of abuse of power by unscrupulous investigators who may wiretap and then misuse the information obtained, either for personal gain or for immoral purposes. Therefore, the protection of privacy rights and individual human rights must be prioritized in the use of wiretapping.

The government must ensure that the provisions of the 1945 Constitution are properly implemented to protect citizens' rights from potential abuse of investigators' wiretapping powers. Along with that, strict regulations and oversight mechanisms should also be implemented to ensure that wiretapping is only used in eligible cases and in accordance with applicable legal principles.

The application of wiretapping in the fight against corruption requires a careful balance between the need for security and the protection of individual rights. On the one hand, wiretapping can be an effective evidence tool to identify perpetrators of corruption. In the process of handling corruption cases, clue evidence has an important role in helping law enforcement officials reveal the truth. This evidence can be in the form of information that is conveyed, received, or stored electronically, as well as documents that contain relevant data or information. In addition, wiretap evidence is also an important part of the evidentiary process. This evidence can be used by judges to determine decisions in a corruption trial.

However, in the position of evidentiary law, especially regarding wiretap evidence, it will be in a dilemmatic position. On the one hand, in order for the law to always be able to recognize the times and technological developments, it is also necessary for the law to recognize various types of digital technology developments to function as court evidence. However, on the other hand, the tendency to

manipulate the use of digital evidence by irresponsible parties causes the law not to be free in recognizing digital evidence. Digital evidence is often referred to as the "best evidence rule", but one digital evidence is difficult to accept in evidence.

The validity of wiretap results as evidence will depend on compliance with established procedures. If the wiretapping process is unauthorized or violates the applicable rules, then the evidence may be declared invalid by the court and cannot be used in judicial proceedings. Therefore, it is important for the legal system to continuously update and adapt to technological developments, while still ensuring that the use of digital evidence is done with integrity and compliance with applicable legal procedures.

Based on the description of the problem above, the author would like to examine more deeply related to this issue with the title: "The Validity of Medical Record Tapping Evidence in Corruption Cases". This research will focus on two discussion questions. First, how is the regulation of wiretapping in Indonesia? Secondly, how is the validity of wiretapping as evidence in corruption cases? The objectives of the research are: Firstly, to know the regulation of wiretapping in Indonesia and secondly to know the validity of wiretapping as evidence in corruption cases.

B. METHOD

The research method applied in this legal study is a normative legal research approach. Normative legal research is an approach that focuses on analysis related to the application of positive law, legal principles and doctrines, legal discovery in concrete cases, legal systematics, level of synchronization, legal comparison, and legal history review. This approach provides a strong foundation for understanding and exploring aspects of law by referring to conceptual and normative frameworks. Normative legal research is carried out to develop new arguments, theories, or concepts that are prescriptive, which are useful for providing views and solutions to legal problems that arise. This normative approach aims not only to understand the applicable law but also to contribute conceptual thoughts that can be the basis for formulating innovative solutions related to the legal issues at hand.

C. RESULT AND DISCUSSION

1. Special Evidentiary Law of Corruption

The regulation of wiretapping evidence in corruption cases has been regulated in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (State Gazette of the Republic of Indonesia of 1999 Number 140, Supplement to the State Gazette of the Republic of Indonesia Number 3874) as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes (State Gazette of the Republic of Indonesia of 2001 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 4150) just like the previous provisions, In the consideration of Law No. 31/1999 on the Eradication of the Crime of Corruption, specifically in letters a and b, it is expressly

stated that corruption is very detrimental to state finances and the state economy and hampers national development, so it must be eradicated in order to realize a just and prosperous society based on Pancasila and the 1945 Constitution and considering that the criminal acts of corruption that have occurred so far, in addition to harming state finances or the state economy, have also hampered the growth and continuity of national development which demands high efficiency.

In addition, in the considerations of Law Number 20 of 2001 concerning the amendment to Law Number 30 of 1999 concerning the Eradication of the Crime of Corruption, precisely in letters a and b, it is clearly stated that the criminal acts of corruption that have been widespread, not only harm the state finances but also have violated the social and economic rights of the community at large, so that corruption needs to be classified as a crime whose eradication must be carried out in an extraordinary manner and to ensure legal certainty, avoid diversity of interpretation, and provide protection for the social and economic rights of the community as well as fair treatment in eradicating corruption, it is necessary to amend Law Number 31 of 1999 concerning Eradication of the Crime of Corruption.

Furthermore, in the general explanation of Law Number 20 of 2001 on the Amendment to Law Number 30 of 1999 on the Eradication of Corruption, it is also stated that the provisions regarding the source of processing of valid evidence in the form of "clues" in addition to being obtained from witness testimony, letters, and testimony of the defendant are also obtained from the testimony of other evidence in the form of information that is spoken, sent, received, or stored electronically by optical means or similar but not limited to electronic data link, electronic mail, telegram, telex, and facsimile, and from documents, namely any recording of data or information that can be seen, read, and/or heard that can be issued with or without the aid of a means, whether contained on paper, any physical object other than paper, or recorded electronically, in the form of writing, sound, images, maps, designs, photographs, letters, tents, numbers, or perforations that have meaning.

Thus, it is not an exaggeration to conclude that corruption is a white-collar and organized crime with a new dimension of crime that will certainly have a very negative and very dangerous impact, so that efforts to prevent and eradicate it need to be carried out in extraordinary ways as well, one of which is the act of wiretapping which recognizes the results of wiretapping as clue evidence in proving corruption.

As is known, according to the law of evidence in criminal cases in the Criminal Procedure Code, the party who is obliged to prove the guilt of the defendant in committing the crime charged is the public prosecutor. The defendant is passive, in the sense that rejecting the charges and defending himself are his basic rights. As is the nature of rights, they are facultative - they can be used or not. For the public prosecutor to prove the defendant's guilt is an obligation, not a right. Therefore, proving the defendant's guilt for the public prosecutor is imperative. However, the results of the public prosecutor's evidence are not final, because what determines at the final stage of all evidentiary activities is the head and hands of the judge. At the final stage of the evidentiary activity, the judge stands on the provisions of Article

183 of the Criminal Procedure Code. The provisions of this article are the standard of examination. In Article 183 there are provisions regarding the standard of proof, abbreviated as the standard of evidence.

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2. Provisions for Wiretapping According to KPK Law Number 19 of 2019 and ITE Law

KPK Law No. 19/2019 replaced the previous law, KPK Law No. 30/2002 on the Eradication of Corruption, and came into force on October 17, 2019. The revision of the KPK Law is based on the opinion that the KPK's performance has been less effective in its function of tackling special crimes. Criticism of the KPK's performance can be seen in the coordination between law enforcement officials in Indonesia. And problems such as how wiretapping, as well as the weak coordination of investigations and investigations carried out by law enforcement officials in Indonesia, overlap in terms of authority from various law enforcement agencies in Indonesia. And there is no Supervisory Institution to oversee the duties and performance of the Corruption Eradication Commission. So that there can be conflicts in terms of rules and regulations.

Therefore, reforms are carried out so that the eradication of Corruption can run effectively and regularly to further reduce the impact of losses on the state economy caused by the perpetrators of Corruption. Because the crime of Corruption is classified as an extraordinary crime, so extraordinary efforts are needed to deal with the crime of Corruption. Law No. 31/1999 on the Eradication of Corruption, which was amended by Law No. 20/2001 on the Eradication of Corruption, has the authority to coordinate and also conduct investigations, inquiries, and prosecutions.

In conducting investigations and investigations, the Corruption Eradication Commission has the authority to conduct wiretapping which is regulated in Article 12 of KPK Law Number 19 of 2019 concerning Eradication of Corruption. The changes that occurred in Law Number 19 of 2019 concerning the Eradication of the Crime of Corruption regarding wiretapping permits are contained in Article 12B which contains:

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 permission as referred to in paragraph (1) shall be carried out based on a written request from the Chairman of the Corruption Eradication Commission.*
3. *The Supervisory Board may grant written permission to the request as referred to in paragraph (2) at the latest 1 x 24 (one time twenty-four) hours from the time the request is submitted.*
4. *If the Chairman of the Corruption Eradication Commission obtains written permission from the Supervisory Board as referred to in paragraph (3), wiretapping shall be carried out for a maximum of 6 (six) months from the time the written permission is received and may be extended (1) once for the same period."*

3. The Validity of Wiretapping as Evidence in Corruption Cases

If examined more closely, it can be concluded that the above definition still does not describe wiretapping technically. It is said so because there are still efforts to convert technical formulations into terminology and language that can be understood by the general public (lay people). Indeed, Law Number 11/2008 on Electronic Information and Transactions is not wrong, because it is supposed to be a rule that regulates the general public formulated in languages that are understood by all levels of society. It becomes a problem if the Electronic Information and Transaction Law is used as the main reference to understand the concept of wiretapping itself. Because the formulation of the definition of wiretapping in the law is a derivation of the technical definition (original definition) of wiretapping.

Conceptually to read about electronic evidence is to start from the definition of electronic information and/or electronic documents, then continue with how to obtain IE / DE, and finally its position in the law as evidence in the trial of evidence.

The key definition of UU-ITE is electronic information and/or electronic documents, which simply means that electronic information and/or electronic documents are a set of electronic data that can only be read using electronic devices. I use the term "electronic data" because the most common terminology of IE/DE is "electronic data" as stipulated in Article 1 point 30 of Government Regulation No. 71/2019 on the Implementation of Electronic Systems and Transactions. Based on the above definition, it must be agreed that all electronic data is the object of the UU-ITE. With the existence of a legal object, namely electronic data, the UU-ITE can be enforced.

Wiretapping/recording in UU-ITE is clearly mentioned in the explanation of article 31 paragraph (1) of UU-ITE, namely:

"What is meant by "interception or wiretapping" is an activity to listen to, record, deflect, alter, inhibit, and/or record the transmission of Electronic Information and/or Electronic Documents that are not public, either using wired communication networks or wireless networks, such as electromagnetic beams or radio frequencies."

Based on the explanation of Article 31 of UU-ITE, it appears that all forms of *surveillance*, intrusion, and documentation (recording) carried out "without permission" are prohibited. This condition shows that it does not mean that the owner of an electronic device has the right to wiretap/record other people without permission because the electronic device he owns has the right to record. In the context of recording/tapping, the object being recorded/tapped is another person, so there are other people's legal rights as well.

Related to sanctions for wiretapping actions are regulated in Article 47 of UU-ITE, the formulation of the norm is as follows:

Every person who fulfils the elements as referred to in Article 31 paragraph (1) or paragraph (2) shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp 800,000,000.00 (eight hundred million rupiah).

By referring to the normative formulation above, the concept of tapping/recording by lawmakers is collected into one and determined as a prohibited act if done without permission. It also means that the act of tapping/recording is allowed if authorized, for example for law enforcement officials (APH), and for individuals (non-APH) if authorized by the person being recorded. If wiretapping/recording is done without permission, then there are criminal sanctions as stipulated in Article 47 of UU-ITE.

About granting permission, two concepts can be used, namely: (1) the concept of privacy, and (2) the concept of copyright. In the concept of privacy, the permission of the person being recorded is the key factor in legitimizing the act of recording. Whereas in the concept of copyright, the legitimacy of ownership of the recording is determined by law (*numerous clausus*). The above explanation shows that the concept of unauthorized recording has a complex legal dimension, so it is not only limited to the issue of "without permission" alone but there is also the concept of ownership in it.

Conventional procedural law has regulated evidence in general, including letters, instructions, experts, witnesses, and so on. With the enactment of the UU-ITE on 21 April 2008, electronic evidence is recognized as evidence as general evidence in procedural law. In terms of electronic evidence there is a dualism of views, namely:

- a. The first view: views electronic evidence as new evidence that adds to the evidence in the Criminal Procedure Code or expands the evidence in the Criminal Procedure Code by relying on the UU-ITE as the basis, and
- b. Second view: electronic evidence is an extension of "clue" evidence. In this view, electronic evidence is nothing more than clue evidence, so it does not add evidence as regulated in the Criminal Procedure Code.

Regardless of the disagreement above, the most important thing is that the recognition of electronic evidence in the law is still equally recognized. However, it is done on the condition that electronic evidence must be obtained by legal means, not by unlawful means such as tapping/recording without permission. This is said

because Constitutional Court decision No. 20/PUU-XIV/2006 was affirmed by the Constitutional Court judge that electronic evidence is still recognized in procedural law as long as it is obtained by legal means. The following is an excerpt from Constitutional Court Decision No. 20/PUU-XIV/2006

The phrase "*Electronic Information and/or Electronic Documents*" in Article 5 paragraph (1) and paragraph (2) and Article 44 letter b of Law Number 11 of 2008 on Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2008 Number 58, Supplement to State Gazette of the Republic of Indonesia Number 4843) does not have binding legal force as long as it is not interpreted, in particular the phrase "*Electronic Information and/or Electronic Documents*" as evidence carried out in the context of law enforcement at the request of the police, prosecutor's office, and/or other law enforcement institutions stipulated by law as specified in Article 31 paragraph (3) of Law Number 11 of 2008 on Electronic Information and Transactions; Based on the Constitutional Court's decision above, it can be seen that electronic evidence is recognized and recognized as valid evidence in court as long as it is obtained legally.

D. CONCLUSION

Electronic information and/or electronic documents and their printouts as stipulated in Article 5 of the UU-ITE are valid evidence as long as they are obtained by legal means; unauthorized tapping/recording is prohibited as stipulated in Article 31 paragraph (1) of the UU-ITE. The legal consequences of unauthorized tapping/recording are twofold: (1) there are sanctions for unauthorized recording as stipulated in article 47 of UU-ITE, and (2) unauthorized recordings are not recognized as valid evidence in court. Third: the meaning of wiretapping when referring to UU-ITE is very broad, but the main principle is unauthorized actions in the form of *surveillance*, *intrusion*, and documentation (recording). This research recommends that the collection of wiretapping evidence must be by the case at hand. and must be honest and neutral in conducting evidence in court. The Supervisory Board in selecting its chairman or members must be independent, not from party people who often have party interests in the decisions taken. And of course, the KPK itself must remain neutral, because the KPK is the last hope to solve corruption cases that often occur among government officials.

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