



The Legal Authority of Wiretapping by Public Prosecutors in Investigating Corruption Crimes

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ABSTRACT

This research aims to analyze the legal authority of the Public Prosecutor in conducting wiretapping in corruption cases and to identify weaknesses in existing regulations. The study employs normative legal research, a process to discover legal rules, principles, and doctrines to address current legal issues. The normative research approach focuses on three methodologies: 1) statute approach, 2) conceptual analysis approach, and 3) comparative approach. Findings indicate that the legal authority of the Public Prosecutor to conduct wiretapping is explicitly regulated in Article 30C letter i of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia. However, there are significant weaknesses in these regulations, including deficiencies in legal substance, legal structure, and legal culture. Substantive weaknesses include the lack of specific legislation on wiretapping. Structural weaknesses involve overlapping wiretapping authorities among institutions such as the Prosecutor's Office, the State Intelligence Agency (BIN), the Police, and the Corruption Eradication Commission (KPK), along with a lack of digital forensic laboratories. Furthermore, the shortage of trained and expert human resources in operating wiretapping equipment is a major obstacle, representing a critical weakness in the legal culture.

Keywords: Legality; Public Prosecutor; Wiretapping; Investigation; Corruption Crime.

1. Introduction

Indonesia, as a rule of law country, uses a criminal justice system known as the "criminal justice system". This system functions to overcome the problem of crime in society, with the aim of controlling crime so that it is within the limits of tolerance that can be accepted by society (Kurniawan, 2023). One of the important components in the criminal justice system in Indonesia is the Prosecutor's Office, which has a significant role in law enforcement, especially in terms of prosecuting and investigating criminal acts of corruption (Ghonu, 2017).

Currently, corruption cases continue to be in the spotlight in Indonesia because the perpetrators are often state officials who hold important positions in government. Corruption is an act that violates the law and can harm the country's economy directly or indirectly (Hutchcroft, 2002). Materially, corruption is considered a violation of society's values of justice. Corruption is included in the extraordinary crime category (Lamihan & Tohari, 2022).

Republic of Indonesia Law no. 11 of 2021 which is a revision of Republic of Indonesia Law no. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia clearly explains the concept of the Prosecutor's Office of the Republic of Indonesia in Article 1 Paragraph (1). According to this law, the Prosecutor's Office is a government institution related to judicial power, tasked with carrying out state power in the field of prosecution and has other authorities based on the law. Thus, the Prosecutor's Office is a government institution that has the authority to prosecute by the Public Prosecutor (Maula, 2022; Widiyanto, 2024).

In the context of resolving corruption cases, several studies have discussed the implementation of a restorative justice approach by the Prosecutor's Office in handling corruption cases (Salsabila & Wahyudi, 2022). Apart from that, the influence of corruption on economic growth and poverty in Indonesia has also become a concern in research (Patra, 2018). Corruption in Indonesia has also become a deep-rooted problem and has caused the country and society to suffer (Simon, 2020).

Prosecutors in Indonesia have broad authority, including carrying out wiretapping as part of evidentiary efforts in investigating criminal acts of corruption (Jayanti et al., 2022). This authority is explicitly regulated in Article 30C letter (i) of Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Based on this law, the Prosecutor's Office has the authority to carry out wiretapping based on a special law that regulates wiretapping and organizes a monitoring center in the field of criminal acts (Hikmawati, 2018; Sekarsari, 2019).

The legal legality of wiretapping authority by the Public Prosecutor in investigating criminal acts of corruption is a complex issue and requires in-depth understanding (Tarigan et al., 2022). In handling criminal acts of corruption, the legality of wiretapping by prosecutors is a major concern because it relates to human rights and the protection of suspects and defendants from arbitrary actions by law enforcement officials and courts (Bryandono, 2022).

However, even though it has a strong legal basis, the practice of wiretapping by the Public Prosecutor in investigating criminal acts of corruption still faces various weaknesses and challenges. These weaknesses include aspects of legal substance, legal structure and legal culture. In terms of legal substance, there are still deficiencies in the legal regulations regarding wiretapping, including the absence of comprehensive regulations related to the Draft Law on Wiretapping and its concept as evidence in criminal acts of corruption. Meanwhile, in terms of legal structure, there is overlapping authority to wiretapping between various law enforcement agencies such as the Prosecutor's Office, the State Intelligence Agency (BIN), the Police, and the Corruption Eradication Commission (KPK). Apart from that, the absence of a digital forensics' laboratory at every level of the Prosecutor's office structure and the lack of human resources who are experts in operating wiretapping tools are challenges in themselves (Sosiawan, 2019; Zam, 2022; Widodo, 2018; Dananjaya et al., 2022).

Legal culture is also an important factor that influences the effectiveness of wiretapping in investigating criminal acts of corruption. Lack of awareness and understanding of the importance of wiretapping as evidence in law enforcement, as well as resistance to the use of technology in the investigation process, are obstacles that need to be overcome (Wibawa et al., 2021; Heryani, 2023).

Therefore, it is very necessary to have a special law that regulates wiretapping in general, including procedures for each authorized institution. This law is very important because there is currently no coordinated regulation regarding wiretapping, which has the potential to violate citizens' constitutional rights. Based on the background that has been described carefully, the author is motivated to research and discuss the handling of corruption cases and their potential with the title: "Legal Legality of the Power of Wiretapping by Public Prosecutors in Investigating Corruption Cases."

2. Method Research

This research uses normative legal research methods, which is a process for discovering legal rules, legal principles, and legal doctrines to answer the legal issues faced. The normative approach used includes three main approaches: the statutory approach, the conceptual analysis approach, and the comparative approach. A statutory approach is used to analyze statutory regulations relevant to the authority of the Public Prosecutor in conducting wiretapping in investigations of criminal acts of corruption, with a focus on laws that explicitly regulate this authority. The conceptual analysis approach aims to understand the basic concepts related to wiretapping authority, including the definition, scope and underlying legal principles. Meanwhile, the comparative approach compares wiretapping authority regulations in Indonesia with regulations in other countries to identify weaknesses and look for best practices that can be adopted (Fahriri, 2020).

This research uses secondary data consisting of primary legal materials (such as Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia), secondary legal materials (books, scientific journals, articles and other literature related to wiretapping authority by the Public Prosecutor), and tertiary legal materials (legal encyclopedias, legal dictionaries, and other reference materials). Data was collected through the study of relevant legal documents and literature, including analysis of laws, regulations and other legal documents, as well as library research to collect relevant theories and concepts.

Data analysis was carried out using qualitative analysis methods. The data that has been collected is analyzed systematically to find answers to research questions through data reduction, data presentation, and

drawing conclusions based on the analysis that has been carried out. Data validity is maintained through data triangulation, by comparing and verifying data from various sources, as well as cross-checking various literature and legal documents used. This research method is designed to provide a comprehensive and in-depth analysis of the legality of the Public Prosecutor's wiretapping authority in investigating criminal acts of corruption, as well as to identify weaknesses in existing regulations and provide recommendations for improvement.

3. Results and Discussion

3.1 Legal Legality of the Public Prosecutor's Authority to Conduct Wiretapping in Corruption Crime Cases

The Prosecutor's Office has the duty and authority to eradicate corruption, including carrying out investigations into criminal acts of corruption in accordance with Article 30 paragraph (1) letter d of Law Number 16 of 2004 jo. Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia, which states that in the criminal field, the prosecutor's office has the authority to "conduct investigations into certain criminal acts based on the Law".

The authority of law enforcement officials to carry out wiretapping in the context of law enforcement is only given to the Corruption Eradication Commission (KPK). Based on the provisions of Article 12 paragraph (1) in conjunction with Article 12B of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Committee, it is regulated that the Corruption Eradication Commission has the authority to conduct wiretapping in order to carry out investigative and prosecutive duties as intended in Article 6 letter e (investigation, investigation and prosecution of criminal acts of corruption). Article 12B paragraph (1) regulates that wiretapping must obtain written permission from the Supervisory Board, and the period for wiretapping is regulated in Article 12B paragraph (4), namely 6 (six) months.

Regulations regarding wiretapping authority in corruption cases in Indonesia are of concern due to disparities in permits between the Corruption Eradication Commission (KPK) and other law enforcement agencies. While the Corruption Eradication Commission (KPK) is given special provisions for conducting wiretapping, other investigative agencies are less clear because there is no specific law regarding wiretapping for corruption cases (Yogi, 2022).

Wiretapping is an important form of evidence in corruption cases, especially in the digital era where electronic communications dominate criminal activities (Heliany et al., 2022). This can produce valuable digital evidence such as emails, telegrams, teleconferences and CCTV footage, helping in expose corrupt practices as well as prosecuting perpetrators.

Overall, the existing gap in wiretapping authority between the Corruption Eradication Committee and other law enforcement agencies in corruption cases highlights the urgency of having a special law regulating wiretapping practices. Establishing appropriate guidelines and procedures for wiretapping, based on legal principles and considerations of the burden of proof, is essential to ensure fair treatment of corruption cases and increase the effectiveness of anti-corruption efforts in Indonesia.

The Prosecutor's Office, as a law enforcement agency, has the authority to prosecute and carry out other duties related to criminal acts. Based on Article 2 paragraph (1) of Law Number 16 of 2004 which has been amended by Law Number 11 of 2021, the Prosecutor's Office is a government institution that exercises state power in the field of prosecution and other authorities based on law. Article 30 paragraph (1) of Law Number 11 of 2021 explains the duties and authority of the Prosecutor's Office in the criminal realm, namely:

- a. Carrying out prosecution.
- b. Carry out the judge's determination and court decisions which have permanent legal force.
- c. Supervise the implementation of conditional criminal decisions, supervise sentences and conditional release decisions.
- d. Carrying out investigations into certain criminal acts based on law.
- e. Complete certain case files and carry out additional examinations before submitting them to court with the coordination of investigators.

Changes to the Prosecutor's Law from Law Number 16 of 2004 to Law Number 11 of 2021 have an impact on the duties and authority of the Prosecutor's Office, including the addition of Article 30A, Article 30B and Article

30C. One interesting addition is the wiretapping authority regulated in Article 30C letter (i), which allows the Prosecutor's Office to carry out wiretapping based on special laws and organize monitoring centers in the field of criminal acts. This authority has sparked pros and cons, especially from non-governmental organizations (NGOs) and human rights activists (HAM), who consider wiretapping to be excessive and contrary to human rights. They argue that amendments need to be made to review the wiretapping procedures and authority given to the Prosecutor's Office of the Republic of Indonesia.

The prosecutor's office as a law enforcement agency has an important role in making effective and accelerating the resolution of criminal cases, especially corruption, which is a serious problem in Indonesia. Prosecutors have wiretapping authority not only at the investigation level, but also at the prosecution, execution and search for DPO levels. Wiretapping is an important strategy in criminal investigations to deal with the development of crime modes, where the results of wiretapping can be used as evidence in the evidentiary process in court. Evidence is the basis of a case examination in court, where valid evidence is regulated by law and used by the judge to prove the defendant's guilt.

In the context of law enforcement, the existence of institutions such as the police, prosecutor's office, courts and other law enforcement agencies is very important. Good coordination and communication between these institutions, as well as a holistic approach to law enforcement, can help ensure consistency and fairness in the Indonesian legal system. Apart from that, the application of restorative justice principles is also relevant in the criminal justice system in Indonesia, where peace efforts outside of court between criminal perpetrators and victims can help resolve legal problems well.

In terms of evidence in court, technological developments have made it possible to use digital evidence, such as conversation recordings, electronic data and other types of data as valid evidence. This shows an evolution in the way of proving criminal acts that are difficult to prove. Thus, effective law enforcement requires good coordination between law enforcement agencies, application of the principles of justice, and adaptation to technological developments as valid evidence in the judicial process.

3.2 Weaknesses in Regulation of the Prosecutor's Authority Tapping in Effort Proof There is Act Criminal Corruption

The Prosecutor's Office of the Republic of Indonesia has an intelligence division spread throughout Indonesia, with duties and functions in accordance with Article 30 paragraph (3) of Law no. 16 of 2004 concerning the Prosecutor's Office. The authority to wiretapping should be given to the Intelligence Prosecutor's Office to support the investigation of criminal acts of corruption by the special criminal offenses sector. Prosecutor's Intelligence is recognized as part of State Intelligence as regulated in Law Number 17 of 2011 concerning Intelligence.

The Prosecutor's Intelligence function includes law enforcement, which means efforts to ensure legal norms function as guidelines for behavior in legal relations in society and the state. This law enforcement involves all legal subjects in every legal relationship, both from the subject's perspective and in a broad sense.

People who follow applicable legal norms in doing or not doing something are considered law enforcers. Law enforcement specifically refers to the efforts of certain law enforcement officials to ensure the implementation of those laws. In this context, law enforcement officials are authorized to use force, when necessary, as shown in wiretapping attempts which are considered coercive measures, which can be carried out by Prosecutor's Intelligence to collect evidence.

However, this step needs to be clearly regulated in law. Strengthening the Intelligence sector has the main aim of supporting law enforcement against criminal acts of corruption. Information collected by Prosecutor's Intelligence can be used as sufficient initial evidence to arrest and follow up on perpetrators of corruption by special criminal offenses in the prosecutor's office. The duties and functions of Prosecutor's Intelligence have been stipulated in the Prosecutor's Office's internal regulations. The duties and authority of the Intelligence Prosecutor's Office are basically supportive law enforcement, both preventive and repressive.

Even though the Prosecutor's Office is equipped with adequate facilities and human resources, it has not been able to fully utilize its authority. This results in a decrease in effectiveness in dealing with criminal acts of corruption. If this authority can be utilized quickly, the Prosecutor's Office as a law enforcement institution can be more effective in suppressing criminal acts of corruption, both through law enforcement actions and prevention

efforts. The regulatory weaknesses found in this research cover three main aspects, namely legal substance, legal structure and legal culture. Each of these aspects poses unique challenges and requires special attention to ensure the effectiveness of wiretapping by Public Prosecutors.

a. Legal Substance

The existing legal substance is still inadequate to support the authority of the Public Prosecutor in conducting wiretapping. Even though Law Number 11 of 2021 gives wiretapping authority to the Prosecutor's Office, there is no specific law that regulates detailed procedures for carrying out wiretapping. The existence of more specific regulations is needed to provide clear and comprehensive guidance regarding wiretapping procedures. Without clear regulations, prosecutors must obtain permission from the court before carrying out wiretapping, which can be a lengthy and bureaucratic process. Discussions on the Wiretapping Bill are still not finished, which adds complexity to the implementation of wiretapping by prosecutors.

b. Legal Structure

The existing legal structure also shows that there is overlapping authority between various law enforcement agencies such as the Prosecutor's Office, the State Intelligence Agency (BIN), the Police, and the Corruption Eradication Commission (KPK). Each of these institutions has the authority to investigate criminal acts of corruption, which often causes conflicts and inefficiencies in the implementation of wiretapping. Apart from that, supporting facilities such as digital forensic laboratories spread across various levels of the Prosecutor's office structure are still inadequate. The existence of this facility is very important for analyzing wiretapping data quickly and accurately. This deficiency hampers prosecutors' ability to process and utilize wiretapping results as effective evidence in investigations.

c. Legal Culture

The legal culture in the implementation of wiretapping by the Public Prosecutor also faces significant challenges. The lack of human resources who are trained and skilled in operating wiretapping tools is one of the main obstacles. Wiretapping technology requires special skills that not many law enforcement officers in Indonesia have. Apart from that, support for adequate and up-to-date tapping equipment is still limited. Existing wiretapping tools are often outdated and unable to capture increasingly complex modern communications. Efforts to improve human resource skills and update wiretapping equipment should be a priority to ensure the effectiveness of wiretapping by prosecutors.

In the context of regulations governing the authority of prosecutors in conducting wiretapping, there is clarity regarding the authority of prosecutors in carrying out investigations into certain criminal acts based on the Prosecutor's Law (Rusmana et al., 2021). Even though the law gives the Prosecutor the authority to conduct investigations, there is uncertainty regarding the Prosecutor's authority to conduct wiretapping. Article 31 paragraph (3) of the Information and Electronic Transactions Law states that wiretapping is carried out in the context of law enforcement at the request of the police, prosecutor's office and/or other law enforcement institutions determined by law (Rusmana et al., 2021).

Although the law outlines the Prosecutor's authority to conduct wiretapping on perpetrators of corruption, there are several practical obstacles that affect the implementation process. One major obstacle is the absence of specific regulations governing the procedures for wiretapping, requiring Prosecutors to obtain court permission before proceeding with wiretaps (Rusmana et al., 2021). Additionally, Prosecutors must seek assistance from other institutions or agencies during the wiretapping process, which can further hinder their efforts in corruption cases. With 520 offices spread across Indonesia, the Prosecutor's Office would be highly effective and efficient in terms of time and cost in conducting interceptions during the investigation phase of corruption cases nationwide.

Due to these obstacles, there is an overlap in authority between law enforcement agencies, such as the police, prosecutor's office and other institutions, which also have authority in the process of investigating criminal acts of corruption. This shows the need for clearer clarification in regulations regarding the authority of prosecutors in carrying out wiretapping, as well as better coordination between law enforcement agencies to ensure the effectiveness and sustainability of the law enforcement process.

4. Conclusion

Legality law authority prosecutor Prosecutor General in do wiretapping (*wiretapping*) in cases of criminal acts of corruption, in particular explicitly set in in provision Article 30C letter (i) Constitution Number 11 of 2021 concerning amendments to Law Number 16 Year 2004 About attorney Republic Indonesia Which mention that: attorney own authority in do tapping based on a special law that regulates wiretapping and organize monitoring center in field criminal act.

Weaknesses in regulations authority attorney in do wiretapping as an effort proof of existence criminal act Corruption in Indonesia now is weak in terms of substance law, weaknesses in terms of legal structure and weaknesses in terms of legal culture. Weaknesses in terms of legal substance include, not yet exists Arrangement Constitution About Tapping (discussion about Bill Tapping and the concept as proof exists follow corruption crime). Weaknesses in terms of legal structure include Tumpang Pinch Authority Tapping (Attorney, SON, Police, KPK), Not yet exists Laboratory Digital Forensics on every level structure prosecutor's office And Lack of Source Power Man Which Expert For operator tool tapping and Not yet There is tool support which is updated.

The government and the House of Representatives should amend the provisions of Article 30C letter i of the Prosecutor's Law to grant full authority to the Prosecutor's Office in matters of wiretapping, in line with Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 on the Prosecutor's Office. For the Prosecutor's Office, it is necessary to incorporate the use of the latest wiretapping equipment in accordance with technological advancements, employ certified expert human resources, and enforce the Prosecutor's Office's wiretapping authority. This measure aims to enable the Prosecutor's Office to effectively prevent and combat corruption. Furthermore, a more progressive, effective, and efficient legal culture of wiretapping needs to be established as part of the efforts to prevent and eradicate corruption.

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