

Limitations of Authority the Prosecutor as Investigators in Taping on the Criminal act of Corruption

Juben MS Sagala¹, Azis Budianto²

^{1,2}Universitas Borobudur, Jakarta, Indonesia

jubenmitrosagala@gmail.com, azis_budianto@borobudur.ac.id

Abstract

This study aims: (1) To find out the authority of the prosecutor as an investigator in wiretapping cases of criminal acts of corruption (2) To find out what are the obstacles for prosecutors in wiretapping cases of criminal acts of corruption. Researchers conducted research using an empirical normative approach, namely examining the implementation of written law in social life relations. Sources of data used in this study are primary data and secondary data. Methods of collecting data utilizing interviews (interviews) and literature/document studies. The data analysis method used in this research is qualitative analysis. The results of this study are expected to increase legal knowledge for students, academics, practitioners, and the public in general as well as researchers in particular regarding the prosecutor's more limited authority in the use of wiretapping devices, to conduct wiretapping must be approved by the court and the existence of other institutions authorized in the process of investigating corruption crime.

Keywords

authority of the prosecutor to conduct wiretapping; corruption cases; criminal



I. Introduction

Law has many facets and broad scope. This is because the law regulates all aspects of people's lives, not only the people of a nation but also the world community which is always experiencing continuous development and change. Therefore, law enforcement efforts in every aspect of life need to be carried out. Currently, the Indonesian state is trying to uphold law enforcement, the state will guarantee the position of every citizen before the law and in government without exception. Law enforcement is a process to realize the wishes of the law so that they are realized and obeyed by the community. So that the life of the Indonesian people can be created that is safe, peaceful, and prosperous.

According to Utrecht, the law is a set of rules (orders and prohibitions) that govern the order of a society and therefore must be obeyed by that society (Rahardjo, 2007). Hans Kelsen added that law is a rule as a system of rules about human behavior. Thus the law does not accumulate on a single rule (rule) but a set of rules (rules) that have unity so that it can be understood as a system, the consequence is that it is impossible to understand the law only by paying attention to one rule (Asshidique, 2006).

The prosecutor is one of the government officials associated with the law enforcement process. Prosecutors have the authority regulated in Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, in which there are several fields, including the criminal, civil, and state administration fields as well as public order and peace. Article 2 paragraph (1) of Law Number 16 of 2004 determines that the Prosecutor's Office of the Republic of Indonesia is a government institution that exercises state power in the field of

prosecution and other authorities based on law. This gives an understanding that the prosecution's authority rests with the prosecutor's office. Article 2 paragraph (2) stipulates that the prosecutor's office is one of the sub-systems in the criminal justice system that carries out state power in the field of prosecution and other tasks stipulated by law which is carried out independently, which means that it is independent of the influence of government power and the influence of power. Others (Hutapea, 2017).

In the criminal context, it is stated in Article 30 paragraph (1) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which states "In the criminal sector, the Prosecutor's Office has the following duties and authorities: (a) to prosecute; (b) implement judges' decisions and court decisions that have permanent legal force; (c) supervise the implementation of conditional criminal decisions, supervisory criminal decisions, and parole decisions; (d) conduct investigations into certain criminal acts based on the law; (e) complete certain case files and for that purpose, they can carry out additional examinations before being transferred to the court which in its implementation is coordinated with investigators" (Ansari, 2013).

In Indonesia, corruption always gets more attention than other criminal acts. This phenomenon is understandable given the negative impact caused by this crime. The impact can touch various areas of life. Corruption is a bad act (such as embezzlement of money, accepting bribes, and so on).

Corruption is a serious problem, this crime can endanger the stability and security of society, endanger socio-economic development, as well as politics, and can damage democratic values and morality because gradually this act seems to become a culture. Corruption is a threat to the ideals of a just and prosperous society.

Corruption is a type of crime that can touch various interests related to human rights, state ideology, economy, state finances, and national morals. Corruption is bad behavior that tends to be difficult to tackle. According to Harkristuti Harkrisnowo, perpetrators of corruption are not random people because they have access to carry out such corruption, by abusing their authority, opportunities, or facilities (Harkrisnowo, 2002).

The difficulty of overcoming corruption can be seen in the many decisions that have been made to free defendants in corruption cases or the minimum amount of punishment borne by the accused that is not commensurate with what he did. If the perpetrator of a criminal act of corruption is caught and sentenced by a panel of judges, the criminal penalty is not commensurate with the state losses caused by the crime of corruption.

One of the efforts made by the prosecutor in trying to eradicate it is by using wiretapping techniques. Based on Article 30 paragraph (1) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is stated that "In the criminal field, the prosecutor's office has the duty and authority to carry out investigations of certain criminal acts based on the law." So from the provisions of the law, it can be said that the prosecutor (Prosecutor) has the authority to conduct investigations into corruption cases (Harmaen, 2013).

This wiretapping technique is considered more effective in uncovering a crime. Because cases of corruption are very difficult to disclose because the perpetrators use sophisticated equipment and are carried out by more than one person in a disguised and organized (corporate) situation. Therefore, this crime is often referred to as a white-collar crime or white-collar crime, it can even be called an extraordinary crime.

Wiretapping or interception is one of the special law enforcement efforts to find sufficient evidence for the investigation process. It is said to be one of the special efforts because this effort cannot be carried out immediately and routinely as an action by law enforcement officials. Very different when compared to arrest, detention, interrogation,

search, and so on, wiretapping requires carefulness before doing it. This is because usually acts of wiretapping are carried out by law enforcement when it is suspected that a person or corporation has committed a criminal act that is very dangerous to the public interest, such as corruption, treason, terrorism, and others (Christianto, 2016).

Corruption crime The Prosecutor's Office has the authority to act as a public prosecutor as well as an investigator. The authority of the prosecutor as an investigator in special crimes is regulated by Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, especially in Article 30 paragraph (1) letter d. Investigation The sound of Article 30 paragraph (1) letter d of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, namely: "In the criminal field, the prosecutor's office has the duty and authority to conduct investigations into certain criminal acts." The definition of "investigation" is contained in Article 1 point 5 of the Criminal Procedure Code which reads: "An investigation is a series of investigators' actions to seek and find events suspected of being criminal acts to determine whether or not an investigation can be carried out according to the method regulated in this law. The definition of investigation is contained in Article 1 number 2 of the Criminal Procedure Code which reads: "An investigation is a series of actions by an investigator in terms of and according to the method regulated in this law to seek and collect evidence with which evidence makes light of the criminal acts that occurred and to find the suspect." The definition of prosecution in the Criminal Procedure Code can be seen in Article 1 point 7 which states: "Prosecution is the action of the public prosecutor to delegate a criminal case to the competent district court in the case according to the method regulated in this law with a request to be examined by the public prosecutor or the judge in court." Barriers to prosecutors in handling corruption crimes in the event of a criminal act of corruption there is someone who knows that a criminal act of corruption has occurred, but does not report it to the authorities.

"This is because the person is afraid of his superiors. In the event of a criminal act of corruption, there is someone who knows that a criminal act of corruption has occurred, but is prohibited by his fellow perpetrators of corruption. In the case of a criminal act of corruption, there is someone who knows that a criminal act of corruption has occurred, but does not dare to report it. Witnesses and defendants take too long because they often change their place of residence so the investigation will take a long time. For this reason, cooperation with related agencies is very necessary for the successful handling of corruption. The difficulty that arises is in the case of investigators finding the property of the suspect or his family obtained from the proceeds of a criminal act of corruption to be confiscated as evidence. This confiscation is very important in nature, namely to restore state finances that have been corrupted, to be further used to carry out development.

II. Research Methods

The research approach used is an empirical normative approach. The normative legal approach is legal research that examines written law from the aspects of theory, history, philosophy, comparison, structure and composition, scope and material, general explanations from an article by article, formality, and binding power of law but does not bind the applied or implementation aspects (Muhamad, 2004). So the normative approach intended in this research is to examine the written law that is binding from all aspects related to the subject under study. Empirical legal research by examining the authority of the prosecutor as an investigator in wiretapping the perpetrators of corruption.

The type of research used in this research is field research. Field research (field research) is research that uses primary data. Sources of data can be obtained through observation, distributing questionnaires, interviews, and participation. This research includes

field research because the data used are mostly primary in the form of interviews.

Sources of data used in this study are primary data and secondary data. Primary data is data obtained directly from informants as the first source (S, 1986). Secondary data is data obtained from a second source, namely complementary data which will later be correlated with primary data sources, including in the form of books, journals, and magazines, as well as personal notes, dissertations, or theses, and official documents (Soekanto, 2007).

III. Discussion

3.1 The Authority of the Prosecutor as an Investigator in Conducting Wiretapping on Corruption Crimes

Article 1 paragraph (1) of Law Number 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia, states that "Prosecutors are functional officials authorized by law to act as public prosecutors and executors of court decisions who have acquired permanent legal force and other authority based on the law."

In Article 30 paragraph (1) of Law Number 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia, the duties and authorities of the prosecutor's office in the criminal field are mentioned, among others:

- a. Conducting prosecutions;
- b. Make the appointment of judges and court decisions that have acquired permanent legal force;
- c. Conduct supervision on the implementation of conditional criminal decisions, supervisory criminal decisions, and parole decisions;
- d. Conduct investigations into certain criminal acts based on the law;
- e. Complete a specific case file and for that can conduct additional examinations before being handed over to the court which in its implementation is coordinated with the investigator.

Based on Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), what investigators mean is as follows:

- a. Investigators are state police officers of the Republic of Indonesia or certain civil servants who are given special authority by law to conduct investigations.
- b. Investigation is a series of actions by investigators in terms of and demanding the method regulated in this law to seek and collect evidence with which evidence makes clear about the criminal act that occurred and to find the suspect.

Nowadays, the crime of corruption has made progress in carrying out its actions. Moreover, if it is supported by advances in communication technology that can be used by the perpetrators of corruption (corruptors) to launch their actions. It makes it difficult for law enforcement to sniff out corruptors. Therefore, an extraordinary way is needed to uncover organized and structured crimes such as corruption. Through this wiretapping method, it is hoped that it will make it easier to uncover corruption cases, and arrest and find evidence to bring corruptors to court.

Wiretapping or in English is called "bugging" is defined as "a form of electronic surveillance by which conversations may be electronically intercepted, overheard, or recorded, usu. covertly; eavesdropping by electronic means" or its free translation is a form of electronic surveillance in the form of conversations or the possibility of electronically capturing, listening or recording, usually secretly, listening secretly with electronic devices. In the big Indonesian dictionary, wiretapping is the process, method, and act of listening (recording) information (secrets, talks) of other people intentionally without that person's knowledge.

In the Regulation of the Minister of Communication and Information Number 11/PER/M.KOMINFO/02/2006 hereinafter referred to as Permenkominfo Number 11 of 2006 concerning Technical Wiretapping on information contains two terms of wiretapping. The two terms are:

- a. Information tapping is listening, recording, or recording a conversation carried out by law enforcement officers by installing additional tools or equipment on the telecommunications network without the person's knowledge conducting the conversation or communication.
- b. Lawful interception is an activity of intercepting information carried out by law enforcement officers for the benefit of law enforcement which is controlled, and the results are sent to the Monitoring Center of law enforcement officers.

From the explanation above, it can be concluded about the wiretapping actions carried out by law enforcement officers in the context of law enforcement.

In the authority of the prosecutor as an investigator to conduct wiretapping on cases of criminal acts of corruption, further discussed through the following sub-chapters:

3.2 Prosecutors' Mechanism for Wiretapping

The Prosecutor's Office as a law enforcement officer to eradicate corruption is very important to be given wiretapping authority in all stages of the process of handling corruption cases. The benefits of wiretapping authority by the prosecutor's office to optimize the handling of criminal acts of corruption. Given that the prosecutor's office is a large institution that spreads throughout the territory of the Republic of Indonesia.

The urgency of the wiretapping authority is for the effectiveness and efficiency of the Public Prosecutor's Office because the accuracy of the data from the wiretapping results can be accounted for. So, the data from the wiretapping results can optimize the handling of corruption cases by the prosecutor's office. The law also explains the prosecutor's authority as the basis for wiretapping. Telecommunications Law, in Article 42 paragraph (2) concerning For the criminal justice process, telecommunications service providers can record information sent and/or received by telecommunications service providers and can provide the necessary information. Information and Electronic Transaction Law, namely Article 31 paragraph (3). Government Regulation Number 52 of 2000 Telecommunications Operations concerning Telecommunications Operations requires a written request to be copied to the Minister of Communication and Information by stating (i) the object being recorded; (ii) the recording period; (iii) the recording period.

From the explanation above, it can be seen that there is a regulation that regulates the authority of the prosecutor as an investigator in investigating the perpetrators of criminal acts of corruption to be able to conduct wiretapping, as an effort to assist in the investigation process.

3.3 Limits of the Prosecutor's Authority in Conducting Wiretapping

The limited authority of the prosecutor's office in the use of wiretapping tools, from the stage of investigation, investigation, and prosecution, is certainly one of the factors that hinder the prosecutor's office in eradicating corruption. On the other hand, the authority to conduct wiretapping is needed to facilitate law enforcement in finding evidence. These limitations, it is certainly one of the obstacles faced by the prosecutor's office in eradicating corruption.

In the law on the Eradication of Corruption Crimes, the evidence for wiretapping against corruption crimes are:

Article 26 A "Legal evidence in the evidence of instructions as referred to in Article 188 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code, specifically for criminal acts of corruption".

The prosecutor's efforts in dealing with corruption will be maximized if the prosecutor's authority to wiretap is equated with the wiretapping authority granted to the Corruption Eradication Commission (KPK). Namely, the Corruption Eradication Commission in carrying out its duties of investigation, investigation, and prosecution related to efforts to handle corruption crimes has the authority to wiretap and record conversations. Based on these provisions, the Corruption Eradication Commission can conduct wiretapping itself without involving other parties. The success of the Corruption Eradication Commission in uncovering criminal acts of corruption is that it has full authority in wiretapping and the results are evident from the Hand Catching Operation (OTT).

In contrast to the case with the prosecutor's office, which has more limited authority in the use of wiretapping tools. The prosecutor's office can only conduct wiretapping at the investigation stage. The procedure and mechanism for wiretapping criminal acts of corruption by the prosecutor's office are carried out based on the prosecutor's Standard Operating Procedure (SOP) through court permission. Through the assistance of other institutions or institutions with the permission of the court, the prosecution can only conduct wiretapping.

As long as they get permission from the court, the prosecution mechanism for wiretapping against corruption by the attorney general's office can still be carried out. Of course, by involving the assistance of other providers with the permission of the court in conducting wiretapping of acts, as long as they get permission from the court, the mechanism for wiretapping of criminal acts of corruption by the prosecutor's office can still be carried out. Of course, by involving the assistance of other providers with permission from the court in conducting wiretapping of acts.

Meanwhile, the prosecutor's office can only conduct wiretapping at the investigation stage. Unlike the Corruption Eradication Commission, the AGO has not been able to conduct wiretapping at the investigation stage.

In the law, it is explained with whom the prosecutor can conduct wiretapping. Based on the wiretapping procedure and mechanism carried out by the prosecutor, based on the Standard Operating Procedure with the court's permission. Through the assistance of other institutions with the permission of the court, the prosecution can only conduct wiretapping.

Article 42 paragraph (2) of the Telecommunications Law reads: "For the criminal justice process, telecommunications service providers may record information sent and/or received by telecommunications service providers and may provide the necessary information upon: a) Written request from the Prosecutor Agung and/or the Chief of Police of the Republic of Indonesia for certain criminal acts; b) Requests by investigators for specific criminal acts under applicable laws. According to Pratiwi (2020) in social life, law and society are two interrelated things that can never be separated. Through instruments, unlawful behavior is prevented and repressive measures are pursued (Tumanggor, 2019). From the aforementioned provisions, it proves the existence of new developments regulated in this Law (Purba, 2019).

This means that from the explanation of the law that regulates wiretapping (interception), the prosecutor's office in conducting wiretapping cannot stand alone.

From the explanation above, the prosecutor as an investigator in prosecuting the perpetrators of corruption can conduct wiretapping to find additional evidence to assist the investigation process. Corruption crimes are generally carried out in congregation so that disclosure is classified as difficult, so wiretapping is one of the efforts to assist in tracking and finding evidence related to alleged corrupt practices. Disclosure of criminal acts of

corruption is quite difficult, considering that this crime is carried out in a congregation so that witnesses tend to cover each other up.

For this reason, through wiretapping, it is hoped that the prosecutor can obtain additional evidence which can then be submitted for the prosecution to the court. The goal is that in proving the prosecutors have obtained enough evidence to reveal the perpetrators of corruption. The proof is a central point in criminal procedural law because this is where a person's fate is at stake in a court trial.

The wiretapping authority should indeed be regulated, including a strict monitoring mechanism. Clear rules so that they can only protect one's privacy. More than that, it is to enforce the due process of law which is a constitutional guarantee that every citizen has the right to protection against arbitrary government action. The Corruption Eradication Commission (KPK) can handle corruption cases very intensively, of course with sophisticated wiretapping technology. The Corruption Eradication Commission can conduct wiretapping from the investigation, investigation, and prosecution stages to other stages.

Meanwhile, the Prosecutor's Office has more limited authority in the use of wiretapping devices. The Prosecutor's Office can only conduct wiretapping during the investigation stage. Unlike the Corruption Eradication Commission, the Prosecutor's Office has not been able to conduct wiretapping at the investigation stage.

IV. Conclusion

The Prosecutor's Office is one of the institutions that is given the authority as an investigator apart from its main task is to carry out prosecutions. Prosecutors are given the authority by law to carry out investigations on specific crimes, one of which is corruption. Prosecutors have more limited authority in the use of wiretapping devices, wiretapping cannot be done alone but through the assistance of other providers with the permission of the court. In addition, the prosecutor can only conduct wiretapping at the investigation stage. So to carry out these duties and functions the prosecutor must cooperate with other institutions based on the rule of law.

References

- Abdulkadir Muhamad, *Hukum dan Penelitian Hukum*. Jakarta: PT Citra Aditya Bakti, 2004.
- Ahmad Harmaen, "Kewenangan Jaksa Sebagai Penyidik Dalam Tindak Pidana Korupsi," *J. Huk. Pidana Indones.*, 2013.
- Harkristuti Harkrisnowo, "Korupsi, Konspirasi dan Keadilan di Indonesia," *J. Dictum LeIP*, 2002.
- Hwian Christianto, "Tindakan Penyadapan Ditinjau dari Perspektif Hukum Pidana," *J. Huk. Prioris*, vol. 5, no. 2, 2016.
- J. D. W. Hutapea, "Tugas dan Wewenang Jaksa dalam Pemeriksaan Tindak Pidana Korupsi," *J. Lex Crim.*, vol. 6, no. 2, 2017.
- Jimly Asshidiqie dan Ali Safa'at, *Teori Hans Kelsen tentang Hukum*. Jakarta: Sekjen dan Kepaniteraan MK-RI, 2006.
- Muhammad Insa Ansari dan Indra Kesuma Hadi, "Pelaksanaan Tugas dan Kewenangan Jaksa di Bidang Perdata dan Tata Usaha Negara," *Kanun J. Ilmu Huk.*, 2013.
- Pratiwi, P.F.P., Suprayitno, and Triyani. (2020). Existence of Customary Law through Comparative Education between Dayak Ngaju Customary Law and National Law. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal) Vol 3 (2): 712-717*.

- Purba, I.G., and Syahrin, A. (2019). Demand against Law and Using Authority in Corruption Criminal Action. Budapest International Research and Critics Institute-Journal (BIRCI-Journal) Vol 2 (4): 194-206.
- Satjipto Rahardjo, Membedah Hukum Progresif. Jakarta: Kompas, 2007.
- S. S. dan Sri and Mamudi, Penelitian Hukum Normatif. Jakarta: CV. Rajawali, 1986.
- Soerjono Soekanto, Pengantar Penelitian Hukum, 3rd ed. Jakarta: UI Press, 2007.
- “Undang-Undang Nomor 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana, Pasal 1 angka 2.” .
- “Ibid., Pasal 1 angka 1.” .
- “Peraturan Menteri Komunikasi dan Informatika Nomor 11 Tahun 2006 tentang Teknis Penyadapan Terhadap Informasi, Pasal 1 Butir 7.” .
- “Ibid., Pasal 1 Butir 9.” .
- “Tim Penulis Fakultas Hukum Universitas Pancasakti Tegal, Buku Panduan Penulisan Skripsi, Tegal: Fakultas Hukum, 2019, hlm. 3.” .
- Tumanggor, F., Muazzul, and Zulyadi, R. (2019). Handling of Narcotics Child Victims in Child Special Coaching Institutions Class I Tanjung Gusta, Medan. Budapest International Research and Critics Institute-Journal (BIRCI-Journal) Vol 2 (4): 50-55.