

URGENCY OF WIRETAPPING IN GETTING EVIDENCE IN CRIMINAL MEASURES

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Abstract

Extraordinary crime requires a special step in its disclosure. Wiretapping is one of the efforts to gather evidence to uncover the crime. But in the RKUHP, wiretapping will also be applied to general criminal offenses. This places the law enforcers have access to personal interests in the name of the law. So vulnerable to human rights violations. Therefore it is important to conduct a study of the urgency of wiretapping in criminal acts. The research method used is normative juridical and the method used is the statutory and conceptual approach. The results of this study indicate that there is an urgency to conduct wiretapping arrangements on specific criminal acts and not on general crime. This urgency arises based on the characteristics of the crime. The author's suggestion is that wiretapping of general criminal acts in the criminal procedure code should be abolished, and the state drafted a law on tapping that specifically regulates material and formal law.

Keywords: criminal acts; urgency of wiretapping

Abstrak

Kejahatan luar biasa membutuhkan langkah khusus dalam pengungkapannya. Penyadapan adalah salah satu upaya untuk mengumpulkan bukti untuk mengungkap kejahatan. Namun dalam RKUHP, penyadapan juga akan diterapkan pada pelanggaran pidana umum. Ini menempatkan penegak hukum memiliki akses ke kepentingan pribadi atas nama hukum. Sangat rentan terhadap pelanggaran HAM. Oleh karena itu penting untuk melakukan studi tentang urgensi penyadapan dalam tindak pidana. Metode penelitian yang digunakan adalah yuridis normatif dan metode yang digunakan adalah pendekatan hukum dan konseptual. Hasil penelitian ini menunjukkan bahwa ada urgensi untuk melakukan pengaturan penyadapan pada tindakan kriminal tertentu dan bukan pada kejahatan umum. Urgensi ini timbul berdasarkan pada karakteristik kejahatan. Saran penulis adalah bahwa penyadapan tindakan kriminal umum dalam kode prosedur pidana harus dihapuskan, dan negara membuat undang-undang tentang penyadapan yang secara spesifik mengatur materi dan hukum formal.

Kata kunci: tindak pidana; urgensi penyadapan

Introduction

Era 4.0 positioned an information technology as the vanguard of activities, so in daily life, is not free from communication media like smartphones, internet connections, and social media through the online way. In the contest, types of criminal acts also experienced developments, including emerging cybercrimes, inclusion of crimes using technology, crime planning using technological communication media and many other types. This technological development must be followed by legal changes to answer the problem.

Law enforcement must be able to absorb technological advances to uphold the right to security for citizens. This is consistent with Supriyadi's opinion as a researcher in the ICJR which states that technological developments have not been able to be balanced by the rule of law and its enforcement. To reduce crime, the law through law enforcement officials must have sophisticated and more effective methods in carrying out their duties. Wiretapping becomes one of the alternative methods of progressive law enforcement.²

Wiretrapping as an effective way of exposing various crimes because the method used is to record activities when planned, committed crimes. However, wiretapping can be a separate crime if done to obtain personal information, or even wiretapping produces personal information that is not authorized to be known by law enforcement. So that

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² Supriyadi W. Eddiyono dan Eramus A. T. Napitupulu, Komentar Atas Pengaturan Penyadapan Dalam Rancangan KUHP, 10 Oktober 2013, <http://kuhap.or.id/data/wp-content/uploads/2013-/11/penyadapan-Kuhap-ICJR.pdf>.

wiretapping can turn into a criminal offense if it violates personal rights. Although this personal right is a human right that can be restricted. The position of the state in this context is to provide protection for personal rights.

Article 28G of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), which describes the right of every person to his personal protection (personal, family, honor, dignity, and property under his authority, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a human right. The article reflects the guarantee of protection of the right to privacy and constitutes the right to legal protection. So that wiretapping must continue to respect or guarantee personal confidentiality rights that are not related to specific crimes. This is in line with Indonesia's position as a rule of law, not a state based on power. The concept of the rule of law and *rechtstaat* law states rights and guarantees rights as the main point in law enforcement. This will obviously apply the principle of equality before the law.

The regulation of broadcasting actions is currently distributed in several laws.³ The definition of wiretapping contained in Law Number 19 Year 2016 concerning Amendments to Law Number 11 Year 2008 Regarding Information and Electronic Transactions hereinafter referred to as Changes to ITE Law, in the explanation of Article 31 paragraph (1) explaining interception or interception is an activity to listen, record, deflect, alter, impede, and/or record the transmission of electronic information and/or electronic documents that are not public, whether using communication cable networks or wireless networks, such as electromagnetic emission or radio frequency."

This regulation can be compared with Article 1 Number 7 of the Minister of Communication and Information Regulation Number 11/PER/M.KOMINFO/02/2006 concerning Technical Tapping of Information, which is called "information wiretapping, is listening, recording, recording, or recording a speaking conducted by law enforcement officers by installing tools or enhancements on the telecommunications network without the knowledge of the person who is speaking or communicating."

Both of these policies have differences namely on the extent of the communication network and there are rules that indicate who is allowed to do wiretapping. In addition, tapping is conducted on information that is not a public information. This needs a deep meaning considering the many types of new forms of crime committed using wireless networks, such as human trafficking for online prostitution, money laundering planning communications, transactions in corruption and other crimes.

Namun perlu dipertimbangkan ulang ada jenis kejahatan yang akan dilakukan tindakan penyadapan. In the context of special crimes or extra ordinary crime, it actually requires a wiretapping step to get one of the evidences in the form of instructions. But in general crime, for example theft by violence, it still needs an in-depth study of the need for wiretapping. Wiretapping is permissible or legal and the results can be used as legal evidence in court proceedings. This arrangement is contained in Article 5 of the Electronic Information and Technology Law which explains "Electronic Information/Electronic Documents as valid evidence as well as expansion of such evidence in accordance with the applicable Procedure

³ Hikmawati, Putri. *Penyadapan Dalam Hukum Di Indonesia: Perspektif Ius Constitutum Dan Ius Constituendum*, Pusat Pengkajian, Pengolahan Data dan Informasi (P3DI) Sekretariat Jenderal DPR RI dan Azza Grafika Mahmud. Yogyakarta, 2015.

Law.” But it needs to be reconsidered there are types of crimes that will be carried out wiretapping.⁴

The Criminal Procedure Code is valid in Indonesia based on Law Number 8 of 1981 concerning Criminal Procedure Law. As a guide for the proceedings, the Criminal Procedure Code has not yet set the evidence of wiretapping. This is reflected in Article 184 of the Criminal Procedure Code which specifies types of evidence including witness statements, expert statements, letters, instructions and statements of the accused. Based on this, wiretapping is often considered as an act that deviates from the Criminal Procedure Code. Although specific regulations are scattered in various laws, the Criminal Procedure Code remains a reference for proceedings when conducting criminal justice.⁵

The wiretapping clause that forms part of the Draft Criminal Procedure Code is a progressive effort in regulating procurement actions so that it is not arbitrary and has clear procedures. The draft Criminal Procedure Code accommodates electronic evidence from wiretapping and other evidence gathering steps as evidence. Valid Evidence based on Article 175 paragraph (1) of the Draft Criminal Procedure Code” includes:

1. Evidence;
2. Letters;
3. Electronic evidence;
4. Statement of an Expert;
5. Statement of a Witness;
6. Defendant's Statement; and.
7. Judge Observations.”

In Article 83 Paragraph (1) of the Draft Criminal Procedure Code explains “Communication interception through telecommunications equipment is prohibited, unless it is done against communication planning and or serious crime. As for without tapping, it's difficult to reveal crime. “Serious crimes referred to in paragraph (1) include crimes against state security, deprivation of liberty/kidnapping, theft by violence, extortion, threats, trafficking in persons, smuggling, corruption, money laundering, counterfeiting of money, immigration, related to explosives and firearms, terrorism, gross violations of human rights, psychotropic drugs and narcotics, and rape.”

All this time, wiretapping actions have been carried out on specific criminal offenses, but the Draft Criminal Procedure Code has begun to include several forms of general criminal acts as part of criminal acts for which wiretapping data are carried out. Like theft with violence, kidnapping, threats and rape. This is ambiguous because it is possible to position this general crime as part of a special crime due to the depth of the crime or due to other considerations. This means that the general criminal can use the steps and evidence of wiretapping results as evidence in the trial.⁶ Specific criminal acts such as corruption, money laundering, narcotics, trafficking in persons use wiretapping to get quick evidence. Given the

⁴ Agata, Damian Yuvens, Ranga Sujud Widigda, Aisyah Sharifa. Dilema Upaya Hukum Terhadap Penyadapan. Jurnal Hukum Dan Pembangunan. Universitas Indonesia. Volume 47, Nomer 3. Tahun 2017.

⁵ Kristian,. Sekelumit Tentang Penyadapan Dalam Hukum Positif Di Indonesia, Nusa Auliam. Bandung, 2013.

⁶ Tomy Michael, Humanity In The Enforcement Of Anti-Corruption Laws, Jurnal Hukum Bisnis Bonum Commune Volume 2 Nomor 2 Agustus 2019.

crime is an extraordinary crime that requires a special strategy in uncovering the crime. Law enforcement officials in uncovering the latest crimes with specific characteristics and carried out with equipment that is not publicly accessible, then law enforcement officials will find it difficult to uncover the case without wiretapping.⁷

General Crimes are criminal acts that can be carried out by anyone with no connection to a position or position that has power. In addition, the crime does not cause widespread effects or impacts, mass casualties, or losses involving the state. Whereas specific criminal acts are committed by people both natural persons and recht persons as corporate crimes, individual crimes, structured and detrimental to the State and involve many parties. If in uncovering crimes that are included in the general criminal field using wiretapping, it is possible to violate the personal rights of public crimes. The State's decision in choosing the type of criminal act that will use wiretapping measures is a way that can be considered as one of the authorities' control over law enforcement officials so as not to violate personal rights. This is in line with Article 17 of the International Convention on Civil and Political Rights which gives guarantees to everyone to have protection from all forms of violations of personal rights.

Based on this background, this research is looking for reasons that are considered urgent and the importance of tapping in general criminal acts. So the researchers formulated the problem of how the urgency of wiretapping in general criminal acts.

Research Method

This research is a normative legal research, the researcher conducts research on the source of legal material that is collected, identified, analyzed and written in legal research. The research approach used is the statutory and concept approach.⁸

Research Results And Discussion

Wiretrapping As A Criminal Act

The Corruption Eradication Commission, the Prosecutors' Office, the Indonesian National Police and the Intelligence Agency use wiretapping measures to detect crimes and obtain evidence that is fast and accurate. The wiretapping step is an effort to detect crimes that have a thin barrier to violations of human rights over guarantees of privacy. In weak settings (including unprofessional enforcement), wiretapping can be misused. Even more so in Indonesia, which does not yet have comprehensive arrangements regarding wiretapping.

Article 12 of the Universal Declaration of Human Rights (UDHR) states that "No one person may be disturbed by his personal affairs, his family, his household or his arbitrary correspondence; nor is it permissible to violate honor and good name. Everyone has the right to legal protection against interference or violation of personal rights."

Decision of the Constitutional Court Number 5/PUU-VIII/2010 concerning Testing the Electronic Information and Transaction Law, "If Article 31 paragraph (3) of the Electronic Information and Transaction Law allows wiretapping to be carried out for law enforcement at the request of the police, prosecutors, and/or law enforcement institutions. Other things that are determined based on the Law, exceptions to the prohibition of wiretapping still have

⁷ National Anti-Corruption Directorate of Romania. Proceeding of Expert Seminar "Effective Means Of Investigation And Prosecution Of Corruption", OECD Anti-Corruption Network for Eastern Europe and Central Asia, Bucharest, Romania on 20 - 22 October 2010.

⁸ Elvinda Rima Harlizal, Penegakan Hukum Illegal Fishing, Mimbar Keadilan Volume 13 Nomor 1 Februari 2020 - Juli 2020.

the potential to be dangerous because there are no restrictions on the action of wiretapping/parts of wiretapping, interests, orders or efforts to request wiretapping.” Based on this, every person has a personal right or confidentiality and if the State conducts wiretapping, it must be based on the orders of the institution by running it according to legal guidelines. The granting of authority without standard standards is prone to be misused in terms of its implementation.⁹

Decision of the Constitutional Court Number 5/PUU-VIII/2010 still has a polemic because it positions wiretapping as an investigation method that can be carried out by state institutions, but also as an intervention on the private confidentiality of citizens. Tapping is the fastest alternative in criminal investigation that uses a new mode and is a serious crime. So that wiretapping is a crime prevention and detection tool. The Constitutional Court's decision mandates the State to provide protection for personal data. Both state and private institutions with technological sophistication and wiretapping tools have the potential to exploit the confidentiality of data in the form of activities or data that can pose a threat to individuals. Secret wiretapping or surveillance needs to be regulated so that enforcement is not arbitrary.¹⁰

As an example of wiretapping conducted by the head of the Corruption Eradication Commission, Antasari Ashar against Nazarudin Zulkarnaen and his colleague named Rani Juliani. Where the wiretapping results were not found results that lead to criminal acts of corruption, but it was revealed that the wiretapping was due to personal interests (read romance) the head of the Corruption Eradication Commission. So it was also revealed Rani's personal information. In this context there was an abuse of authority by the head of the Corruption Eradication Commission.¹¹

Individual activity is part of individual rights to which data is kept confidential, insofar as it is not a criminal offense. Communication and actions which then get wiretapped must be based on the interests of disclosure of negative negative impacts on the public. If wiretapping is carried out as a criminal offense, then Article 47 of the Information and Electronic Transaction Law explains the punishment of persons who fulfill the criminal element in Article 31 paragraph (1) or paragraph (2) concerning persons who intentionally and without rights or violate the law in interception. Then the person “is sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 800,000,000.00 (eight hundred million rupiah).”

Wiretapping As A Way To Collect Evidence

Wiretapping arrangements have been explicitly stated in various Laws that are lex specialists. Based on the author's identification, there are a total of 12 (twelve) laws, namely the Law on Psychotropics, the Law on Telecommunications, the Law on Corruption, the Law on the Corruption Eradication Commission, the Law on Advocates, Laws on Criminal Trafficking in Persons, Laws on Information and Electronic Transactions, Laws on Judicial

⁹ Peter Hay, 'Civil Law', in *International Encyclopedia of the Social & Behavioral Sciences: Second Edition*, 2015 <<https://doi.org/10.1016/B978-0-08-097086-8.86007-9>>.

¹⁰ W. Mills, George. Criminal Procedure--Evidence--Wiretapping-- Admissibility in State Courts. Kentucky law journal. Vol.52. Issue 2. Article 13.

¹¹ Deborah Cao, *Translating Law, Translating Law*, 2016 <<https://doi.org/10.1080/09076760903073996>>.

Power, Laws on Narcotics, Laws on Corruption Courts, Laws on Money Laundering, and Laws on Money Laundering, and Law on Judicial Commission. The legislation regulates the authority to do wiretapping, while the procedures for wiretapping or procedures as formal law are still not regulated. Therefore the Criminal Procedure Code is still a reference.¹²

The Criminal Procedure Code Article 184 does not explicitly contain that wiretapping is a way to propose legal evidence. Although the results of wiretapping can be categorized as clues. The Criminal Code regulation on evidence does not accommodate evidence from wiretapping. Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption, hereinafter referred to as Amendment to the Corruption Act, Article 26 states that evidence of guidance referred to in Article 188 paragraph (2) of the Criminal Procedure Code can also be obtained through electronic recording or wiretapping results. This means that specifically the regulation of evidence is contained in the Corruption Act. So that in cases of corruption procurement can be done in gathering evidence. Strengthening there is Article 5 of the Electronic Information and Transaction Law which states that Electronic Information and Documents are valid evidence. And the evidence explained is an extension of the meaning of the legal evidence according to the Procedural Law.¹³

The draft Criminal Procedure Code enters the reform era of criminal law by the inclusion of electronic evidence which intercepts the results in accordance with Article 175 paragraph (1). Before the electronic evidence was accommodated in the Criminal Procedure Code Draft, or as long as the Criminal Code Draft was not yet legalized that legalized the tapping step so as to produce evidence of evidence in the form of tapping results, the reference used was the Information and Electronic Transaction Act as the legal basis for using electronic evidence as a valid proof. after the extension of criminal procedure law.

Article 26A Amendment to the Corruption Act explains that evidence as intended in Article 188 paragraph (2) of the Criminal Procedure Code can be obtained through electronic recording. So that the results of wiretapping or electronic recording is an extension of evidence evidence in the Criminal Procedure Code and declared valid.

Wiretapping In the Perspective Of Human Rights

Indonesia as a state of law has the characteristics of recognition of human rights by recognizing, respecting, fulfilling and protecting human rights. As a country that has ratified the International Convention on Civil and Political Rights (ICCPR) in 1966 by enacting Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil Rights and Politics), hereinafter referred to as the Covenant on Civil and Political Rights, Indonesia must demonstrate its commitment. Both Article 12 of the Universal Declaration of Human Rights (UDHR) and Article 17 paragraph (1) of the Social and Political Convention provide guarantees that personal life, family home and correspondence cannot be interfered arbitrarily. So this must be upheld. Human rights as the spirit of human life in socializing have legal instruments that guarantee the existence and implementation of rights. In addition to the two conventions, Article 28G

¹² Daniel E. Monnat and Anne L. Ethen. A Primer on the Federal Wiretap Act and Its Fourth Amendment Framework. *Journal of the Kansas Trial Lawyers Association*. March 2004. 13.

¹³ Kimberle Williams Crenshaw, 'Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law', in *Law and Social Movements*, 2017 <<https://doi.org/10.1017/s207183-2200016850>>.

paragraph (1) of the 1945 Constitution also guarantees personal rights, honor, dignity and property, the right to security and protection from the threat of fear of doing or not doing something. So in the human rights perspective, everyone has the right to legal protection of his personal rights. The guarantee must be given by the state and the state must be wise or not interfere with personal rights but arrange to protect. Including if the state carries out a process of disclosure of corruption, it must continue to guarantee the fulfillment of human rights.¹⁴

In the enforcement of human rights, rights do not have a hierarchical and rigid classification. Because there are characteristics of human rights that are crosscutting. But to facilitate the State in carrying out its obligations, Carel Vasak as a scientist from France categorizes the generation of human rights in a generation that asks the State to be passive in regulating civil and political rights, and actively regulating social and cultural economic rights. The impact of the division of human rights generation is the existence of categories of rights that can be restricted and rights that cannot be restricted. Included in the rights that can not be limited among other rights to life, life without torture, personal freedom, mind and conscience, religious rights and practice religious teachings, free from slavery, equality before the law and the right not to be prosecuted in rules that are retroactive.

Activities and communications are personal rights that must be protected but can also be intervened by the State, so that they are included in derogable rights. Article 28J paragraph (2) of the 1945 Constitution becomes the basis for the State to intervene in personal rights because restrictions on rights and freedoms must be determined by law. Although the explanation of Article 40 of the Telecommunications Law states that personal rights receive protection from the State. This means that specific arrangements regarding disclosure are very much needed in order to create a harmonization between the 1945 Constitution of the Republic of Indonesia and specific laws that protect the protection of personal rights and use wiretapping in collecting evidence.

A wiretapping can be categorized as a violation if it is not in accordance with the laws and regulations even though the specific law on staking has not yet been owned by Indonesia. So that the rights of citizens in freedom of communication also remain protected (Article 28F of the 1945 Constitution). Inter Article in the constitution is very related and requires derivative arrangements as a form of elaboration and realization of human rights. In this context, the Constitutional Court's decision Number 5/PUU-VIII/ 2010 is in accordance with the constitution as its main reference. Furthermore, the Constitutional Court Decision Number 20/PUU-XIV/2016 positions wiretapping equivalent to confiscation and distortion in criminal procedural law. Although wiretapping reduces personal rights.

What is important to be drafted by the State is wiretapping arrangements so that in law enforcement there are standards or procedures that are specific in providing limits on the authority of wiretapping to minimize arbitrariness. Wiretapping becomes a careful action so that citizens' privacy rights are not violated as guaranteed in the constitution. The wiretapping arrangement becomes a material reference accompanied by formal rules to facilitate law enforcement officials carrying out their duties without violating human rights.

¹⁴ Anonymous. The Right to Privacy in the French Republic Stakeholder Report Universal Periodic Review 29 th Session – France. 5.

In connection with the actions of the apparatus in law enforcement based on human rights, it can refer to the International principle of due process of law or often called a legal process based on human rights. "In due process, a criminal process must be able to be controlled to prevent abuse of power, and authoritarian nature in the context of maximum efficiency. Due process applies what is called "presumption of innocence" or often called presumption of innocence. So that the procedures made will synergize with the protection of human rights."¹⁵

Urgency Of Wiretapping In Special Crimes

Corruption Eradication Commission and other state institutions have used wiretapping in revealing various cases. The use of this method has benefited the Corruption Eradication Commission in solving corruption cases which are very difficult to obtain evidence. During the 10 years the Corruption Eradication Commission worked, wiretapping was carried out and showed effective results. Article 12 of the Corruption Eradication Commission Law provides an explanation if the Corruption Eradication Commission has the authority to conduct wiretapping in revealing corruption cases, this is done at the stage of investigation, investigation and prosecution.

The Indonesian National Police has also used wiretapping in special criminal cases. This authority is given to investigators in narcotics and psychotropic cases, where wiretapping can be carried out against a person suspected of committing the crime. This is in accordance with Article 55 letter c of the Psychotropic Law. Investigators of the Trafficking in Persons case are also given authority to tap in the process of preparing, planning and carrying out crimes of trafficking in persons, in accordance with Article 31 of the Criminal Act on Trafficking in Persons. The Indonesian National Police is also authorized to intervene in corruption cases in accordance with Article 26 of the Corruption Law.

Referring to the authority and actions taken by the Indonesian National Police and the Corruption Eradication Commission, the wiretaps carried out so far have been tapping on specific criminal acts such as corruption, money laundering, human trafficking, narcotics. Tapping is a progressive step in law enforcement in specific criminal acts. Characteristics of specific criminal offenses include organized actions, broad and detrimental effects to the State, suspected perpetrators or suspects and defendants in special crimes often serving as officials or parties holding power. So that a specific criminal offender is a person whose.

Wiretapping methods for legal purposes, especially in specific criminal acts are needed. Wiretapping is present because the disclosure of systematic and sophisticated criminal cases requires speed and clear evidence. Wiretapping actions are useful for detecting crimes so that disclosure of specific criminal acts can be carried out. Special Crimes have the character of predictability of crime, so there is a logical reason for making interceptions. For example in the case of money laundering, where there is a diversion of funds or assets. So there is a strong suspicion that crime will occur or is happening. In this context tapping becomes a logical and strategic step to be carried out by the Corruption Eradication Commission or the Indonesian National Police. In contrast to general criminal offenses that do not have the complexity and flow of predictions of organized crime so it is relevant to conduct wiretapping. For example in cases of theft with violence.

¹⁵ Syamsuddin, Aziz. *Tindak Pidana Khusus*, Sinar Grafika. Jakarta. 2011.

Wiretapping on serious crimes or extra ordinary crime has a strong urgency, for reasons:

1. The speed (urgency) of revealing cases will affect the impact of the spread of special crimes.
2. The accuracy of law enforcement measures in cases that are detrimental to the state.
3. makes it easy to get accurate evidence by following established procedures.
4. The state is able to detect special acts that have broad impacts so that strategic steps can be taken quickly and accurately.

The urgency of wiretapping must be followed by definite arrangements.

One expert stated that interception arrangements were still scattered in various laws. The number of these rules can lead to different interpretations from various parties. It even has the potential for norm conflicts and norm inconsistencies to occur. So that regulation in one law is needed.

Urgency Of Wiretapping In General Crimes

The draft Criminal Procedure Code currently includes wiretapping actions in criminal justice. This is different from the mandate of the Constitutional Court who asked the state to draw up a separate law related to wiretapping. Wiretapping itself is not prohibited completely because the wiretapping is permitted to be carried out on communication that can be allegedly related to specific criminal crimes. So that law enforcement officials need to do wiretapping. This is in accordance with Article 83 paragraph (1) of the Draft Criminal Procedure Code.

In general criminal offenses, there is very little reason for alleged organized crime or for baseless allegations. So that wiretapping on common criminal acts will open up opportunities for violations of personal rights. Moreover, if it is not proven as alleged, wiretapping becomes a criminal offense. Therefore, there is no urgency to do wiretapping in general criminal acts. As for people who were tapped in submitting compensation claims as part of enforcing repressive legal protection rights.

The draft Criminal Procedure Code details the specific types of criminal acts including criminal acts a. on state security (Chapter I, Book II of the Criminal Code *); b. deprivation of liberty/kidnapping (Article 333 of the Criminal Code *); c. theft with violence (Article 365 Criminal Code *) d. extortion (Article 368 of the Criminal Code *); e. threats (Article 369 of the Criminal Code *); f. human trafficking; g. smuggling; h. corruption; i. money laundering; j. counterfeiting money; k. immigration; l. regarding explosives and firearms; m. terrorism; n. gross violations of human rights; o. psychotropic substances and narcotics; and p. rape. Whereas abduction, theft by violence, threats and rape are common crimes. So that the categorization in the Draft Criminal Procedure Code can change the legal habits according to the applicable procedural law in Indonesia.

Wiretapping that was originally carried out on special criminal offenses has expanded in general criminal offenses. While the relevant allegations were not found in general criminal offenses. Characteristics of widespread urgency and damages are also not open to public crime. General criminal subjects include ordinary people whose actions do not have a broad impact like officials in making policies. So there is no urgency in wiretapping in general criminal acts.

Conclusion

The right to communicate and the secrecy of the substance of communication are human rights guaranteed in the constitution as personal rights. However, wiretapping can be done on the communication if there is a specific criminal crime. Whereas wiretapping in general criminal offenses has no relevant basis so that it has the potential to violate human rights guaranteed by Article 28G of the 1945 Constitution and Article 17 of the Civil and Political Convention. General criminal offenses do not have specific characteristics such as specific criminal offenses, so the urgency of wiretapping has heavy on special criminal acts on the grounds of speed of disclosing cases that will affect the widespread impact of special crimes, the accuracy of law enforcement steps towards cases that harm the state, making it easier to get evidence accurate.

References

- Agata, Damian Yuvens, Rangga Sujud Widigda, Aisyah Sharifa. Dilema Upaya Hukum Terhadap Penyadapan. *Jurnal Hukum Dan Pembangunan*. Universitas Indonesia. Volume 47, Nomer 3. Tahun 2017.
- Anonymous. The Right to Privacy in the French Republic Stakeholder Report Universal Periodic Review 29 th Session – France.
- Cao, Deborah, *Translating Law, Translating Law*, 2016 <<https://doi.org/10.1080/09076-7609-03073996>>
- Crenshaw, Kimberle Williams, 'Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law', in *Law and Social Movements*, 2017 <<https://doi.org/10.1017/s2071832200016850>>
- Daniel E. Monnat and Anne L. Ethen. A Primer on the Federal Wiretap Act and Its Fourth Amendment Framework. *Journal of the Kansas Trial Lawyers Association*. March 2004.
- Elvinda Rima Harlizal, Penegakan Hukum *Illegal Fishing*, *Mimbar Keadilan* Volume 13 Nomor 1 Februari 2020 – Juli 2020.
- Hay, Peter, 'Civil Law', in *International Encyclopedia of the Social & Behavioral Sciences: Second Edition*, 2015 <<https://doi.org/10.1016/B978-0-08-097086-8.86007-9>>
- Hikmawati, Putri. Penyadapan Dalam Hukum Di Indonesia: Perspektif Ius Constitutum Dan Ius Constituendum, Pusat Pengkajian, Pengolahan Data dan Informasi (P3DI) Sekretariat Jenderal DPR RI dan Azza Grafika Mahmud. Yogyakarta, 2015.
<http://icjr.or.id/mengatur-ulang-hukum-penyadapan-indonesia/>.
- Kristian. Sekelumit Tentang Penyadapan Dalam Hukum Positif Di Indonesia, Nusa Auliam. Bandung, 2013.
- Manthovani, Reda. Penyadapan Vs. Privasi, PT. Bhuanna Ilmu Populer. Jakarta, 2015.
- National Anti-Corruption Directorate of Romania. Proceeding of Expert Seminar "Effective Means Of Investigation And Prosecution Of Corruption", OECD Anti-Corruption Network for Eastern Europe and Central Asia, Bucharest, Romania on 20 – 22 October 2010.
- Syamsuddin, Aziz. Tindak Pidana kHusus, Sinar Grafika. Jakarta, 2011.
- Tomy Michael, Humanity In The Enforcement Of Anti-Corruption Laws, *Jurnal Hukum Bisnis Bonum Commune* Volume 2 Nomor 2 Agustus 2019.
- W. Mills, George. Criminal Procedure--Evidence--Wiretapping-- Admissibility in State Courts. *Kentucky law journal*. Vol.52. issue 2. Article 13.