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A JURIDICAL REVIEW OF LEGALITY AND BURDEN OF PROOF OF WIRETAPPING EVIDENCE IN CASES OF CORRUPTION CRIMES BASED ON LEGAL REGULATIONS IN INDONESIA

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Abstract

Amid national development efforts in various fields, people's aspirations to eradicate corruption and other irregularities are increasing. It is because, in reality, the existence of criminal acts of corruption has caused enormous state losses, which can impact the emergence of crises in various fields. The number of defendants in corruption cases acquitted by general courts or state courts was based on various reasons. One was the corruption charge against the defendant, but it proved it. The legislators were well aware of the difficulties that law enforcers may face in proving criminal acts of corruption. Thus, besides continuing to refer to the legal aspects of general proof regulated in the Criminal Procedure Code (KUHAP), legislators provided exceptions for proving corruption cases. One of them was using digital/electronic proof, such as email, telegram, wiretapping, teleconference, video conference, or CCTV footage. Based on the previous explanation, this study was aimed at elaborating on the legality of wiretapping at the stage of the investigation process in corruption cases and the evidentiary value of wiretapping communication/telephone devices based on the provisions of Article 183 of the Criminal Procedure Code to optimize the disclosure of corruption in Indonesia. The research method used was a qualitative method through a normative juridical method, namely the method used by mastering the law for a particular problem and how to implement or apply these legal regulations. From the results, the research found that in the Criminal Procedure Code (KUHAP), there was also an article that regulates wiretapping, namely Article 7 paragraph (1) j states that: "Investigators, because of their obligations, have the authority to carry out other actions according to applicable law." This article needs to state that investigators are allowed to wiretap clearly. However, in the elaboration of this article, at least it states that other actions according to the applicable law are already a part of wiretapping that carry out other actions according to the responsible law.

Keywords: Juridical Review, Legality, and Burden of Proof Wiretapping Evidence, Corruption Crimes

INTRODUCTION

Amid national development efforts in various fields, people's aspirations to eradicate corruption and other irregularities are increasing. It is because, in reality, the existence of criminal acts of corruption has caused enormous state losses, which can impact the emergence of crises in various fields. A criminal act of corruption is an act against the law which can directly or indirectly harm the country's economy. Material point of view, the act is seen as an act that is contrary to the values of community justice (IGM Nurdjana. 2010:18). The number of defendants in corruption cases whom general courts or state courts acquitted was based on various reasons. One was the corruption charge against the defendant, but they did not prove it. As a great crime, proof of corruption is more difficult than other crimes.

For this reason, an extraordinary effort is needed to prove it. To prove that the defendant has indeed committed a criminal act of corruption is not enough with conventional evidence as those that happened in other general crimes. This difficulty occurs because, generally, corruption is committed by people who have the opportunity, authority, or facilities made possible by the position they have obtained.

The legislators are well aware of the difficulties that law enforcers may face in proving criminal acts of corruption. Thus, besides continuing to refer to the legal aspects of general evidence regulated in the Criminal Procedure Code (KUHAP), legislators provide exceptions for proving corruption cases. One of them is using digital/electronic evidence, such as email, telegram, telephone wiretapping, teleconference, video conference, or CCTV recordings. There are many examples of corruption cases that used electronic evidence to prove. An example is the use of telephone tapping evidence in the Anggodo Widjojo case and the Akil Mochtar case (Chairman of the Constitutional Court at the time of his arrest), which also involved Ratu Atut Choisiyah (Governor of Banten) and Tubagus Chaeri Wardana. (Wawan). Law enforcers use electronic evidence in proving corruption cases to uncover criminal acts of corruption. The use of electronic evidence itself is accommodated in several laws and regulations. Among them, Law Number 19 of 2016 focuses on the amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. Next, Law Number 20 of 2001 concerns the amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.

From the description above, this research was intended to discuss the following:

1. What is the legality of wiretapping at the stage of the investigation process in corruption cases?
2. What is the evidentiary value of wiretapping communication/telephone devices based on the provisions of Article 183 of the Criminal Procedure Code to optimize the disclosure of corruption in Indonesia?

LITERATURE REVIEW

Theory of Law Enforcement

The definition of law enforcement can also be interpreted as the implementation of the law by the officers of law enforcement and by everyone interested in following their respective authorities according to the applicable legal rules. Therefore, the enforcement of criminal law is an integral part of the process, beginning with the investigation, arrest, detention, and trial of the accused and ending with the convict's prison (Husen, 1990:58). The process of law enforcement in Indonesia relating to Corruption Crimes. Thus, in its handling, the authority is given to the Police, Prosecutors, Judges, the Corruption Eradication Commission, and Advocates based on the criminal justice system in Indonesia.

Law enforcement is making efforts to enforce or function legal norms as a guide for actors in traffic or legal relationships in social and state life. According to Mardjono Reksodiputro, it is interpreted within the framework of three concepts, as follows:

a. The concept of total law enforcement which demands that all values behind the legal norms be enforced without exception;
b. The concept of full enforcement recognizes that the total concept needs to be limited by procedural law and so on for the protection of individual interests;
c. The concept of actual law enforcement emerged after it was believed that there was discretion in law enforcement because of limitations, such as infrastructure, quality of human resources, quality of legislation, and lack of community participation. (Reksodiputro, 1994:17).

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Definition of Wiretapping

Wiretapping can interpret as a process, a way, or showing an act, or the act of tapping (Kristian, 2013:179.). KBBI defines tapping as a process of deliberately listening and recording other people's information secretly, and wiretapping itself means a process, method, or act of tapping (Kamus Besar Bahasa Indonesia, 2008:1337).

Regarding the definition of wiretapping, based on the act, it is on the Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, Law Number 19 of 2016 concerning Amendments to Laws Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE), Law Number 39 of 1999 concerning Telecommunications (Telecommunication Law), and Law Number 17 of 2011 concerning State Intelligence (State Intelligence Law).

The definition of wiretapping is as follows:

a. Explanation of Article 1 Paragraph (5) of the Corruption Eradication Commission Law.
b. Wiretapping is an activity of listening, recording, and recording the transmission of electronic information and documents that are not for the public, whether using wired networks, communications, or wireless networks, such as electromagnetic radiation. Or radio frequency or other electronic devices (UU RI No. 19. 2019).
c. Explanation of Article 31 of the Electronic Information and Transaction Law states that what is meant by interception or wiretapping are activities to listen, record, deflect, change, inhibit, and record the transmission of Electronic Information and Electronic Documents that are not for the public in nature.
d. Either use communication cables or wireless networks, such as electromagnetic or radio frequency beams.
e. Article 40 of the Telecommunications Law states that wiretapping is installing additional tools or equipment on a telecommunications network to obtain information by illegal means. In addition, the information owned by someone is a personal right that must protect. Thus, wiretapping must be prohibited.
f. Article 32, paragraph (1) of the State Intelligence Law defines wiretapping as an activity of listening, recording, deflecting, altering, inhibiting, and recording the transmission of electronic information and electronic documents, either using a communication cable network or a wireless network, such as electromagnetic or radio beams. Frequency, including checking parcels, mail, correspondence, and other documents. What is meant by "statutory regulations" is this law. The wiretapping results are only used for intelligence purposes and not for publication."

Regarding the definition of wiretapping, as explained earlier, the authority of law enforcement officers to carry out wiretapping in the context of law enforcement is also given to the Corruption Eradication Commission (KPK) agency (UU RI No. 17. 2011).[8] The wiretapping carried out by KPK is used to obtain instructions for them in proving a crime reported by the public following the authority granted by the law. The granting of special authority in the field of wiretapping is in its implementation as a means that can assist KPK in uncovering a corruption case. The implementation of wiretapping by KPK is based on the law which is the Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, Article 12B as follows:

a. Wiretapping, as referred to in Article 12 paragraph (1), shall be carried out after obtaining written permission from the Supervisory Board.

b. Obtaining a permit, as referred to in paragraph (1), is carried out based on a written request from the leadership of the Corruption Eradication Commission.
c. The Supervisory Board may give written permission to the request as referred to in paragraph (2) no later than 1 x 24 (one time twenty-four) hours as the request is submitted.
d. In this case, the head of the Corruption Eradication Commission obtains written permission from the Supervisory Board, as referred to in paragraph (3. Wiretapping is carried out no later than 6 (six) months from the receipt of written permission and can be extended 1 (one) time for the same period.

The authority to wiretap the Corruption Eradication Commission (KPK) is based on the need to strengthen the evidence in investigative activities. The investigation carries out after the data and information collection activities conduct after indications of Corruption Crimes find. Another consideration for wiretapping is that there is a strong suspicion obtained from the report on the results of supervision (indications) and sufficient preliminary evidence.

Although the Corruption Eradication Commission (KPK) legally has the wiretap authority, it does not mean that KPK can use it arbitrarily. There must be an accountable procedure before wiretapping. Wiretapping is not the first step taken to obtain evidence and is a challenging decision because it must be based on sufficient preliminary evidence.

Theory of Proof

According to the Indonesian Dictionary, the term proof in the language (terminology) is a process of action, a way of proving, an attempt to determine whether the defendant is right or wrong in a court session (Setiawan, 2021). In this case, the proof is one of the important elements in criminal procedural law that determines a defendant's guilt or innocence in a trial.

According to M. Yahya Harahap opinion, he states that: “Proof is the central point of examining cases in court. The proof contains guidelines and rules about the ways justified by law to prove the guilt charged to the defendant. The proof is also a provision that regulates the proof justified by law that can be used by judges in proving the defendant's guilt. Therefore, judges cannot use proof that is contrary to the law. The truth of a decision must be tested with legally valid proof and has the power of proof attached to every proof found (Harahap, 2000:252).

In the opinion, the proof used by the judge to make a decision must be under the provisions of the law as regulated in Article 184 paragraph (1) of Law Number 8 of 1981 concerning the Law of Criminal Procedure. Here are the legal proofs, as follows:

a. Witnesses’ testimony;
b. Experts’ testimony;
c. letters;
d. hint;
e. the defendants' statement.

The five pieces of proof have the same strength of proof in criminal proceedings. There is no difference between one another. The order regulated in the article is only the order in the trial examination. In general, there are several theories regarding the proof system, namely:

1. Conviction in time theory, a system of evidence that states whether or not a defendant is guilty, is solely determined by the judge's assessment of the conviction. The judge's conviction can obtain through the evidence presented in the trial.

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2. Conviction Raisonee Theory is a system of evidence based on the judge's belief to determine whether or not the defendant is guilty. However, in this system, the judge's belief is limited and must be based on clear and acceptable reasons described in the decision.
3. Positive Theory of Evidence According to the Law is evidence based on a belief system based on belief or conviction in time theory. Evidence in this system is based on valid evidence that has been determined by law, accompanied by the judge's confidence in determining whether or not the defendant is guilty.
4. Negative Theory of Evidence, according to Law (*Negatief Wettelijke stelsel*), is a proof system that uses a theory of a combination of a positive statutory proof system with a conviction in time theory.

The formulation theory is that the defendant is guilty and is determined by the judge's conviction based on the means and with valid proof according to the law. Meanwhile, the evidentiary system adopted by the Criminal Procedure Code (KUHAP) is a negative statutory proof system because it combines a positive statutory proof system with a conviction in the time theory system. This reason can see from the provisions of Article 183 of the Criminal Procedure Code (KUHAP), which stipulates that a judge may not impose a crime on a person unless. With at least two valid pieces of evidence, he gains confidence that a criminal act has occurred and that the defendant was guilty of committing it.

METHOD

The research method is a qualitative method through a normative juridical method, namely the method used by mastering the law for a particular problem and how to implement or apply these legal regulations. This normative juridical approach includes research on legal systematics or the level of legal synchronization. Normative legal research, also known as library law research, is research carried out by examining existing library materials, namely primary legal, secondary legal, and tertiary legal, which are then systematically arranged, studied, and drawn conclusions. Last, the literature study takes an inventory of legal materials from various sources.

RESULTS AND DISCUSSION

1. The Legality of Wiretapping in the Stage of Investigation Process in Corruption Cases

Sabian Utsman argues that:

"The law is closely related to society, society changes, and the law must also change. Likewise, the trend of crime that utilizes information technology is increasingly being carried out. The types and modus operandi of crimes are growing and sophisticated. Also, the success rate in revealing crimes with conventional methods is arguably very low when using information technology methods to conduct an investigation. The enforcement of criminal procedural law cannot be separated from the processes or settlement of criminal cases committed. At the initial stage of the settlement of criminal cases, namely through the process of research and investigation. In this case, the investigation is a decisive step because at this stage it aims to uncover a criminal act that has occurred through the search for evidence. The nature of the investigation itself is to obtain the truth based on the facts (Utsman. 2008).

Regarding investigations in the Criminal Procedure Code (KUHAP), it is stated as follows: An investigation is a series of investigators' actions in terms of and according to the method provided for in this law to seek and collect evidence which with that evidence makes clear the crime committed. Happened, and to find the suspect. In the Criminal Procedure Code (KUHAP), some articles regulate wiretapping, namely Article 7 paragraph (1) j, which states that: "Investigators, because of their obligations, have the authority to take other actions according to applicable law."

This article needs to state that investigators are allowed to wiretap clearly. However, in the explanation of this article at least it states that other actions according to the applicable law are already a part of wiretapping, who carry out other actions according to responsible law. It gives authority to investigators who, because of their obligations, can take any action according to the law, for they are responsible. In Article 284 paragraph (2) of the Criminal Procedure Code (KUHAP), it is also possible for there to be deviations or exceptions from the provisions of the Criminal Procedure Code (KUHAP) against the criminal procedure process of a certain crime regulated in certain laws. Thus, this law opens the possibility of deviating from the provisions stipulated in the criminal procedure law, as it has also been accommodated and regulated in Article 284 paragraph (2) of the Criminal Procedure Code (KUHAP). Wiretapping is currently one of the methods used to conduct research or investigations as well as evidence to overcome or prevent the occurrence of a criminal act or serious crime, which is the main focus in Indonesia.

Every action made by an investigator must have a basis of reason, and that consideration can be accounted for in research, investigation, or as evidence. One of the actions investigators conducted is through wiretapping. In Indonesia, wiretapping has several legal basics and considerations spread across several laws and regulations. The legislation regarding wiretapping or interception consists of two parts, as follows:

a. Legislation on the Subject and Authority of Wiretapping.
b. Legislation in the Wiretapping Procedure.

Although several laws have regulated it, the research, investigations, and electronic evidence process is still partial and limited. They can only be used in limited legal actions and certain cases. In other words, the Criminal Procedure Code (KUHAP), as a source of criminal procedure law itself, does not regulate digital evidence.

In principle, investigating criminal acts using the wiretapping method is the same as other general crime techniques. However, considering that the problem of information technology is related to technology, the evidentiary process becomes an obstacle in the investigation. The investigator's authority in the general investigation is as regulated in Article 7 of the Criminal Procedure Code (KUHAP). Also, the Criminal Procedure Code (KUHAP), as in Article 284 paragraph (2), provides exceptions to the procedural law provisions in certain criminal laws. Thus, it is possible that special criminal laws, including laws related to criminal acts containing wiretapping as part of the investigation, have given special or additional authority to investigators in carrying out investigative duties. Then, from the information above, one conclusion can be that the investigators are authorized to conduct wiretapping in investigating criminal cases. In criminal procedural law, what is sought is material truth. The material truth is the truth according to the facts. Concerning investigations in the Criminal Procedure Code (KUHAP), knowledge and understanding of investigations need to be stated with certainty and clarity because they directly offend and limit human rights. Talking about the strength and position of proving criminal cases, we cannot separate them from the general evidence system. The evidence system still uses the old and conventional legal provisions. Those who have not been able to reach evidence for crimes of crime using digital devices due to advances in information technology, which places the position of technological products as evidence. As a

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result, legal uncertainty arises regarding digital evidence, ironically, inversely proportional to the increasingly widespread development of digital technology both domestically and abroad.

The legal position and power in the wiretapping process as evidence in proving criminal cases are generally very relevant to their acceptance as evidence in a sophisticated and modern world and to uncover and prove the occurrence of these conventional criminal acts.

Other evidence is needed besides what has been known so far in the Criminal Procedure Code (KUHAP), such as data or information stored in electronic storage media. Here, wiretapping is a very sensitive matter. On the one hand, it is a limitation of human rights, but on the other hand, it has an aspect of legal interest. Therefore, in theory, wiretapping often needs to be approved by the court as evidence in proving a criminal case which is usually only approved when other evidence is listed in Article 184 of the Criminal Procedure Code (KUHAP).

With letters, witness statements, instructions, expert testimony, and oaths, it is impossible to detect a criminal act that utilizes communication information technology as a means or by conventional means. In the practice of law in Indonesia, legal provisions regarding evidence are regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (starting now referred to as KUHAP). In Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP), it has been stated in detail or limited legal evidence according to the law, namely:

a. Witness Testimony.
b. Expert Testimony.
c. Letter.
d. Instruction
e. Defendant's Statement.

Under the provisions of Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP), the law determines five types of legal evidence. Besides these five types, they cannot be used as legal evidence. The provisions regarding the evidence above are provisions of the criminal procedural law that are coercive (*dwingenrecht*), meaning that all types of evidence that have been regulated in the article cannot be added or subtracted. Meanwhile, the Draft Bill of the Criminal Procedure Code (KUHAP) of 2008 has accommodated the development of information technology as one of the types of evidence. Therefore, determination of evidence under the explanation day in the judiciary in our country, five kinds of evidence can be used in court as regulated in Article 184 of the Criminal Procedure Code (KUHAP). However, in the 2008 draft of the Criminal Procedure Code (KUHAP), the legal evidence in court is changed to:

a. Evidence;
b. Letters;
c. Electronic Evidence;
d. Witness Testimony;
e. Expert Testimony;
f. Defendant's Statement

There is no problem regarding the criminal acts that already have legal rules that regulate digital evidence (electronic evidence). Because criminal acts that have been violated have special legal rules regarding electronic evidence as legal evidence before the court. Thus, the existing electronic evidence becomes evidence, as stipulated outside Article 184 of Law No. 8 of 1981 concerning the Criminal Procedure Code, which has been considered legal evidence before the court. Evidence of wiretapping using recording devices and recordings as the legal basis for using electronic information/documents as evidence in court has become clear. It has become clearer after the enactment of Law No. 11 of 2008 concerning Information and Electronic Transactions. What is considered to provide more legal certainty and wider scope of application that is not limited to criminal acts of corruption, money laundering, and terrorism? In legal practice, the use of recording devices and recordings is part of the process of prosecuting criminal cases. The Criminal Procedure Code (KUHAP) is not regulated regarding recordings as evidence, but in the Corruption Law, recordings are legal evidence. "Under Article 26 A of Law Number 20 of 2001 (Law 20/2001) of the amendment to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (*Tipikor*), the recording results include evidence of instructions".

Meanwhile, in the Criminal Procedure Code (KUHAP), he continued, there is no evidence of instructions regarding recordings. The law of proof is special. Its basis is not solely on the provisions of the criminal procedure law as referred to in Article 183 of the Criminal Procedure Code (KUHAP). Strictly speaking, the provisions of the evidence of a special nature are contained in the law on certain crimes outside of general crimes as regulated in Article 103 of the Criminal Code (KUHP). Special crime law is regulated by the provisions of formal criminal law and material criminal law. In essence, the law of evidence can be categorized into the law of evidence which is general/conventional and specific. The dimensions of the general/conventional evidentiary law are enshrined in the provisions of the criminal procedure law as introduced by the Criminal Procedure Code (KUHAP). Finding material truth takes work. The available evidence, according to the law, is very relative. Evidence in the trial has a very significant position in the trial process where this evidence is a means that can use to strengthen the argument to prove that a criminal act has been accused of the defendant in a trial in court. Likewise, with evidence using electronic devices in the trial. Wiretapping is one of the methods used by law enforcement agencies given by laws and regulations as part of the research, investigation, and evidence process. In addition, the wiretapping method has also proven successful in examining organized crime syndicates and other special crimes in various parts of the country. It assists law enforcement officials in making preventive arrests and taking the necessary precautions.

The Criminal Procedure Code (KUHAP), as the basis for procedural law in Indonesia, does not regulate the existence of digital or electronic evidence. However, the regulation regarding the position of electronic digital evidence is scattered in various laws and regulations that regulate it individually. However, regarding the provisions of positive law in Indonesia, several laws and regulations regulate electronic evidence (digital evidence) as legal evidence before the court. Therefore, wiretapping as evidence can be justified and allowed in special laws. From the constitutional point of view, wiretapping to reveal a crime, as an exception, can be justified. This reason is that the freedom to communicate and obtain information as regulated in Article 28F and Article 28G Paragraph (1) of the 1945 Constitution are not articles that cannot be deviated under any circumstances. It means that wiretapping may occur in the context of uncovering crimes based on special provisions of the law (*lex specialis derogat legigenerali*). Moreover, the wiretapping process must follow applicable laws and regulations and by what is required. Wiretapping must be carried out based on legal interests and must be approved by the relevant legal institution.

2. **The value of the evidence of wiretapping of communication tools/to optimize the disclosure of corruption in Indonesia**

The strength and assessment of the evidence are contained in articles 185 to 189 of the Criminal Procedure Code. The strength of evidence can refer to the effectiveness of evidence against a case depending on several factors. One is psychosocial factors, including code of ethics, quality of law enforcement attitudes, relationships with community members, and community participation. Then, one of the law functions, both as a rule and as an attitude of action or normal behavior, is to guide human behavior. Thus, it also becomes one of the scopes of the scientific study of law. The categorization of the results of wiretapping or recorded conversations is stated in Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption Article 26A. Here, it is determined that: "Legal evidence in the instructions as referred to in Article 188 paragraph (2) of the Criminal Procedure Code, specifically for criminal acts of corruption, can also be obtained from (UU No.20. 2001).

Other evidence in the form of information that is spoken, sent, received, or stored electronically with optical devices or the equivalent; and documents, namely any recorded data or information that can be seen, read and or heard that can be issued with or without the help of a means.

Whether written on paper, any physical object other than paper, or recorded electronically, in the form of writing, sounds, pictures, maps, designs, photographs, letters, signs, numbers, or perforations that have meaning.

The results of wiretapping or recordings as evidence are legally recognized from the provisions of Article 26A of Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. The submission of recorded evidence as a result of wiretapping is used by the Corruption Eradication Commission to prove events or facts relating to cases of criminal acts of corruption in the court. Guiding evidence has the same proving power as other evidence. However, it cannot stand alone in proving the guilt of the accused. Therefore, sound recording, the result of wiretapping, can also be categorized as information, and electronic documents can be categorized as an extension of documentary evidence.

Recorded conversations or wiretapping results from the Corruption Eradication Commission have evidentiary power based on the Criminal Procedure Code, as the wiretapping results are part of electronic information. In other words, the wiretapping results are one of the legally valid types of evidence and an extension of the provisions of evidence according to law. It is stated in Article 184 of the Criminal Procedure Code as evidence of instructions. Next, the recognition of electronic evidence is also contained in Article 5, paragraph (1) and paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, stating that:

a. Electronic Information and Electronic Documents and their printed results are valid legal evidence;
b. Electronic and Electronic Documents and their printouts, as referred to in paragraph (1), are extensions of valid evidence under the applicable procedural law in Indonesia (UU No.19. 2016).

It is clearly stated in the provisions of Article 5, paragraph (1) and paragraph (2) that Electronic Information and Electronic Documents and their printouts constitute legal evidence, which is an extension of legal evidence under the applicable procedural law in Indonesia. Therefore, if it is related to the results of wiretapping, the valid evidence is the results of wiretapping carried out by institutions authorized by law.

The strength of proof of wiretapping recordings, both in the form of transcripts and in the form of sound recordings as evidence, has no different from other evidence. In the trial, however convincing that a wiretapping tape proves the defendant's guilt, the judge cannot only pass a verdict based on the wiretapping. Although Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions has confirmed the status of wiretapping records as evidence, in practice, judges prefer to include wiretapping records as a source of evidence.

The recording of the wiretapping results is placed in the judge's consideration to support other evidence regulated in the Criminal Procedure Code (KUHAP). The inherent authority to conduct wiretapping within the Corruption Eradication Commission when conducting investigations is based on Article 26A of Law No. 31 of 1999 as amended by Law No. 20 of 2002 concerning the Eradication of Criminal Acts of Corruption.

In conjunction with Article 12A of Law No. 30 of 2002 concerning the Corruption Eradication Commission, judges can use the results as legal evidence in the form of instructions in handling corruption cases. Therefore, recording the wiretapping results cannot become separate evidence in criminal law. However, the information obtained from the results of the wiretapping in the form of recordings can be used as evidence of the Criminal Procedure Code (KUHAP), namely instructions. Thus, it can say that the Corruption Eradication Commission (KUHAP) KPK), in conducting investigations, investigations, and prosecutions, is also bound by the Criminal Procedure Code (KUHAP). Furthermore, wiretapping is also regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions concerning Electronic Information and Transactions. According to the law, wiretapping is an activity to listen, record, deflect, alter, inhibit, and or record the transmission of electronic information and documents that are not public.

Either a communication cable or a wireless network such as electromagnetic radiation or radio frequency. The KPK follows the operational standard based on the KPK's decision. Every year, the implementation of KPK wiretapping is also audited by a special team formed based on the Regulation of Ministry of Communication and Information No. 11/PER/M.KOMINFO/020/2006 stated that the decision to conduct wiretapping by the KPK was based on the need to strengthen the evidence in investigative activities.

Indonesia's Positive Law itself, precisely in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, has clearly technically stated the wiretapping definition. It is explicitly regulated in the explanation of Article 31 paragraph (1), which states that: "Interception or wiretapping is an activity to listen, record, deflect, change, block, and Electronic Documents that are not public, either using a communication cable network or a wireless network, such as electromagnetic radiation or radio frequency ." Nevertheless, wiretapping is still visible in the efforts to convert technical formulations into a term monologue and language that can be understood by the general public (the general public). Indeed, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions is not wrong because it is proper that a rule governing the general public should formulate in languages that are understood by all levels of society. However, it becomes a problem if the Information and Electronic Transaction law are used as the main reference to understand the concept of wiretapping itself. It is because the law's formulation of the meaning of wiretapping is a derivation of the technical meaning of wiretapping.

CONCLUSION

Based on the above elaboration, it can summarize that wiretapping may carry out in the context of uncovering crimes based on special provisions of the law. Some laws support wiretapping. First, based on Article 28F and Article 28G Paragraph (1) of the 1945 Constitution about freedom to communicate and obtain information, the process of wiretapping must follow applicable laws and regulations and be under what is required. In other words, wiretapping must be carried out based on legal interests and approved by the relevant legal institution. Next, in the Criminal Procedure Code (KUHAP), there was an article that regulates wiretapping, namely Article 7 paragraph (1) j states that: "Investigators, because of their obligations, have the authority to carry out other actions according to applicable law ."Therefore, this article needed to state that investigators are allowed to wiretap clearly. However, the applicable law, especially in the explanation of this article, states that other actions are already a part of wiretapping who carry out other actions according to the responsible law.

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