**The Attorney's Authority in Conducting Wiretapping of the Corruption Crimes according to Law Number 11 of 2021 Concerning to the Attorney General's Office of the Indonesian Republic**

**Romli SA, Muhamad Sadi Is, Belmento**

Professor of the Faculty of Sharia and Law UIN Raden Fatah Palembang, Jl. Prof. K. H. Zainal Abidin Fikry No. 1 Km 3.5 Palembang, Indonesia

Lecturer at the Faculty of Sharia and Law UIN Raden Fatah Palembang, Jl. Prof. K. H. Zainal Abidin Fikry No. 1 Km 3.5 Palembang, Indonesia

Head of Intelligence at the District Attorney's Office of Ogan Komering Ilir (OKI),Indonesia

**ABSTRACT**

Considered to be a systematic chronic disease, due to the threat of corruption in Indonesia. It is very worrying because it involves the private sector and government officials. To prevent and eradicate this criminal act of corruption, the prosecutor's office must have additional authority to carry out wiretapping because the attorney's authority in wiretapping corruption in Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia has not yet been regulated regarding the attorney's authority in wiretapping corruption. However, the authority of the prosecutor's office to wiretap criminal acts of corruption is regulated in another law, namely Law Number 19 of 2016 concerning Electronic Transaction Information. Then, the authority of the prosecutor's office in wiretapping corruption in the future is to revise Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia which gives authority to the prosecutor's office in wiretapping corruption crimes for the sake of the effectiveness and efficiency of the Attorney's performance, because the accuracy of wiretapping results can accountable, and to optimize the handling of corruption cases by the Attorney General's Office. Considering that corruption can have a negative impact which can cause various distortions to the life of the state and society, so in Islamic law, the criminal act of corruption is included in the act of facade which is strictly prohibited.

**Keywords: Prosecutor's Authority, Wiretapping, and Corruption Crime.**

1. **Introduction**

Corruption is like a contagious disease that has spread to all layers of state administrators, both in the executive, legislative, and judicial institutions, the three institutions that should control each other are inseparable from this contagious disease, namely corruption. This shows that corruption has not only caused financial losses and hindered the development process, but further, corruption has also threatened the fundamentals of our nation and state life, which if we take it seriously, the corruption may be the last chapter of our journey as a dignified nation based on Pancasila values (Maringka 2018).

Aknolt Kristian Pakpahan explained that corruption is like a contagious disease not only in the executive, legislative and judicial institutions but slowly spreads to other institutions. As we can see, corrupt practices can be found from the smallest level, such as the individual level, and develop again at a higher level, such as business people and government officials. (Pakpahan, Triwibowo, and Astari Magetsari 2018).

So that corruption cases in Indonesia are always increasing from year to year as noted by ICW which recorded 1,008 corruption cases being tried at the Corruption Court, High Court, to the Supreme Court from January to June 2020. Of these, 1,043 defendants have been tried at all levels. court. The number of corruption cases and defendants being tried in semester I 2020 increased compared to the same period the previous year. In semester I of 2019, 497 cases were tried with a total of 504 defendants. Although in Indonesia since 1999 there have been special laws that can ensnare perpetrators of corruption, namely RI Law No. 31 of 1999 concerning Corruption Crimes as revised by RI Law No. 20 of 2001 concerning Eradication of Corruption Crimes and RI Law No. 28 of 2001 1999 concerning the Implementation of a Corruption-Free, Collusion and Nepotism-Free State, then the government of the Republic of Indonesia created a special institution to deal with criminal acts of corruption, namely the Corruption Eradication Commission as stipulated in RI Law No. 30 of 2002 which was revised by RI Law No. 19 of 2019 concerning the Corruption Eradication Commission ( KPK). Even though at first the institutions that had the authority to eradicate corruption were carried out by the police and the prosecutor's office, these two institutions were considered not to be optimal in eradicating corruption so that the KPK was born. Since the KPK Law was revised, the public, especially those who are concerned with eradicating corruption, think that the institution is weak in carrying out its duties to eradicate corruption. Therefore, researchers need to strengthen the prosecutor's office in eradicating criminal acts of corruption, namely by granting wiretapping authority, because RI Law No. 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia has not regulated wiretapping by the prosecutor's office on corruption cases.

1. **Research Method**

The research method in writing this article is a normative legal research method. This research is legal research using a socio-normative approach. The data used are primary data and secondary data which are analyzed using quantitative analysis.

1. **Discussion and Result**
	1. **The Authority of the Prosecutor's Office in Conducting Wiretapping of Corruption Crimes**

In essence, the Prosecutor's Office is a judicial institution that carries out executive functions, which also protects the constitution and the rights of the population and safeguards state sovereignty in the field of prosecution, which has a central position in the legal system in Indonesia, because apart from acting as a controller in case handling (*dominus litis*), The Attorney General's Office also has the authority as the executor of court decisions that have permanent legal force (*executief ambtenaar*). Not only that, the Attorney General's Office also has the authority to conduct investigations into certain criminal acts, including criminal acts of gross violations of human rights, corruption, money laundering, forest destruction, and acts as a state attorney both inside and outside the court and participates in organizing activities to create public order and peace. Moreover, it also contributes to ensuring that national development can work to advance the life of society, nation and state. This indicates that the Attorney General's Office has a very strategic role in the judicial sphere, especially law enforcement (law applying function) and justice, which are multidimensional covering various aspects of life, not only law, but also social, economic, cultural, defense and security.

The Prosecutor's Office as a judicial institution that carries out executive functions undoubtedly requires institutional strengthening and the authority it has. The Attorney General's Office should be able to carry out reforms in various aspects of social, national and state life, especially in the field of law enforcement to realize the identity of the Attorney General's Office of the Republic of Indonesia which is more professional, adaptive and responsive in dealing with and resolving various legal issues in society and the demands of the modern era. currently developing rapidly, also in line with universal legal principles.

Moreover, the modus operandi of perpetrators of corruption is now sophisticated and systematic. The Public Prosecutor's Office is an investigator of corruption, so law enforcement must be carried out in an extraordinary way (extraordinary) with extraordinary legal instruments. However, the Attorney General's Office as one of the investigators for extraordinary crime of corruption which was born earlier than the KPK has not been given the authority to conduct wiretapping so that corruption in Indonesia cannot be overcome.

Leden Marpaung explained that the Attorney General's Office as a law enforcement agency is required to play a more active role in upholding the rule of law, protecting public interests, upholding human rights, and eradicating Corruption, Collusion and Nepotism (KKN). Under this Prosecutor's Law, the Attorney General's Office of the Republic of Indonesia as a state institution that exercises state power in the field of prosecution must carry out its functions, duties and authorities independently, regardless of the influence of government power and the influence of other powers. (Marpaung 2009).

Therefore, Yudi Kristiana explained that the position of the Prosecutor's Office in criminal justice is decisive because it is a bridge that connects the investigation stage with the examination stage in court hearings. Based on the prevailing legal doctrine, a principle states that the Public Prosecutor has a monopoly on prosecution, meaning that everyone can only be prosecuted if there is a criminal charge from the Public Prosecutor, namely the prosecutor's office, because only the Public Prosecutor has the authority to present a suspect who has committed a crime before the court. (Kristiana 2006).

The Attorney General's Office, in carrying out its duties, should be independent and free from the influence of government power and other powers in its efforts to realize legal certainty, legal order, justice and truth by avoiding religious norms, decency and decency, and must explore human values, law, and justice in society. Prosecutors who act as Public Prosecutors must be free from the influence of any power because to achieve a goal in upholding the law and are required to carry out their duties and powers in accordance with the law. As well as upholding the rule of law, protecting public interests, upholding human rights, and eradicating corruption, collusion and nepotism (Adang 2011).

The independence of the prosecutor's office is needed to avoid government intervention in prosecution policies; therefore, the policy must be purely based on law enforcement interests. As revealed by the Dutch constitutional law expert Thorbecke that the prosecution of criminal law may not be a sword in the hands of a political or administrative government, which according to the view of that government must be swung or left in its scabbard. (BD 2000). Likewise, in wiretapping, the prosecutor's office must be independent.

Although the prosecutor's office in wiretapping corruption crimes in Indonesia can be guided by the World Bank which explains the ways that can be done to take action against corruption crimes can be done by: 1). Competitive Private Sector: Conducted by means of legal regulations, where these legal regulations aim to simplify regulations, stability of the rule of law by reducing monopolistic practices; 2). Political Accountability: Sound political and economic competence, integrated legal policies and announcements of state officials' assets; 3). Civil Society: Conducted with a public hearing of any policies that will be decided by the government; 4). Institution Resist of Power: Conducted by means of an independent court; 5. Public Sector Management: Providing professional performance to the community with excellent service (Fauzi et al. 2021).

The judiciary is an instrument of the state for law enforcement to protect and protect the public, and is obliged to maintain the rule of law. The judiciary thus acts as law enforcer. The Attorney General's Office is the only tool of the state which is a tool of the government that has the authority to delegate criminal cases, prosecute perpetrators of criminal acts in court and carry out decisions and decisions of criminal judges. Apart from that, in general crimes, he is a public prosecutor, but in special crimes, in this case corruption, the prosecutor has the role of investigator and public prosecutor. As an investigator, special expertise and skills are needed to find and conclude evidence so that the suspect can be found. Basically investigation and investigation of every crime is the beginning in handling every crime, especially corruption (Maidin Gultom 2018).

The role of the prosecutor's office must be increased, especially the wiretapping authority in corruption cases. Because corruption in Indonesia has spread widely in society. its development continues to increase from year to year, both the number of cases that occur and the number of losses to state finances as well as in terms of the quality of crimes committed are increasingly systematic and their scope has entered all aspects of people's lives. Because of this, the crime of corruption has been considered as a serious crime which seriously disrupts the economic and social rights of the people and the state on a large scale, so that its handling must be carried out by means of extraordinary treatment and proof that requires serious, professional and independent steps. (Makawimbang 2014).

Thus, the researcher is of the opinion that the prosecutor's office in making efforts to prevent and eradicate criminal acts of corruption in Indonesia which almost occur in every institution, the prosecutor's office must be given wiretapping authority with the aim of making it easier to handle corruption cases, because so far the prosecutor's office only accepts wiretapping evidence given by the KPK.

* 1. **The Prosecutor's Authority in Conducting Wiretapping Against Corruption Crimes in Indonesia in the Future**

The authority to wiretap corruption to be carried out by the prosecutor's office in the future is very important, because the prosecutor's office as a law enforcement officer has the same goal in all stages of the process of handling cases of corruption, bearing in mind that the prosecutor's office is a large institution that is spread throughout the territory of the Republic of Indonesia. The urgency of this authority is for the effectiveness and efficiency of the Attorney's performance, because the accuracy of wiretapping results can be accounted for, so that the Attorney's Office can optimize the handling of Corruption cases. Procedures and mechanisms for wiretapping of criminal acts of corruption by the Attorney General's Office, carried out by the Prosecutor's Office itself based on the established Standard Operating Procedures (SOP) for investigation, investigation and prosecution, not through the assistance of other providers and not through court permission, because it is less/ineffective and there are fears of leakage information.

The authority to wiretapping corruption cases is evidence for the prosecutor's office in resolving corruption cases. Because proof is a central point in procedural law, be it criminal, civil or other procedural law, because this is where a person's fate is at stake in a court hearing. In principle, proof starts from the existence of a legal event. Criminal procedural law itself considers that evidence is the most important part (Makarim 2005). Proof of the results of wiretapping, because wiretapping is one of the activities to eavesdrop with or without installing additional tools or devices on telecommunication networks which are carried out to obtain information either secretly or openly. Wiretapping activities have existed since the first world war which was carried out to maintain national defense and security. And the debate regarding the use of wiretapping methods is not new among legal activists in Indonesia. Currently wiretapping gives a new color in the process of investigation and investigation up to proof (Makarim 2004).

Wiretapping is a method used by law enforcement agencies granted by laws and regulations such as the law on the eradication of criminal acts of corruption as part of the process of investigation, investigation and evidence. Wiretapping carried out by law enforcement agencies in Indonesia is an authority that has been mandated by law. In addition, wiretapping methods have also proven successful in examining organized crime syndicates and other special crimes in various parts of the country, because it helps law enforcement officers in making arrests. and in taking the necessary precautions of the Criminal Procedure Code. Therefore, wiretapping as evidence can be justified and allowed in special laws such as laws on eradicating corruption. Wiretapping to reveal a crime, as an exception can be justified. That the arrangements regarding wiretapping must prioritize the interests of the nation and the State, especially in the field of law enforcement and enforcement of human rights. Granting the authority to carry out wiretapping is seen as an effort to protect and achieve much greater goals and benefits, namely the Indonesian people, by sacrificing the rights of those parties who are strongly suspected of committing criminal acts that have wide-reaching and organized impacts, and wiretapping arrangements must also be made. and based on the spirit of humanity, namely respect for and protection of Human Rights and the interests of the nation and the Republic of Indonesia (Ang 2015).

Wiretapping method is considered a powerful action in uncovering various crimes. Regulations regarding wiretapping are currently scattered in several existing laws. As is the case with the definition of wiretapping contained in Article 31 paragraph (1) of Law Number 11 of 2008 as revised by Law Number 19 of 2016 concerning Electronic Transaction Information, that wiretapping is an activity to listen, record, divert, modify, impede, and/or record the transmission of electronic information and/or electronic documents that are not public, either using wired communication networks or wireless networks, such as electromagnetic beams or radio frequency. Wiretapping is one of the activities of eavesdropping with or without installing additional tools or equipment on telecommunication networks which are carried out to obtain information either secretly or openly. Wiretapping activities have existed since the first world war which was carried out to maintain national defense and security. Now wiretapping is being carried out to reveal various legal cases, one of which is corruption related to state financial losses. Utilization of information technology in addition to having a positive impact, of course, on the other hand can have a negative impact. The positive and negative impacts of the use of information technology are like two sides of a coin that must be distinguished but cannot be separated. Its meaning, on the positive side, can certainly be used to carry out development and achieve national goals aspired by the Indonesian nation and on the negative side, of course it can be misused for crimes, one of which is a crime that is categorized as an extraordinary crime, namely corruption. (Kristian dan Yopi Gunawan 2013).

Wiretapping as a means of preventing and detecting crime also tends to be dangerous to human rights, if it is in the wrong law (due to weak regulations) and in the wrong hands (due to lack of control). Wiretapping is vulnerable to abuse, especially when the legal rules that underlie it are not in accordance with human rights and the regulations are chaotic. In addition, there is also a tendency for law enforcement officials to use wiretapping as the main means of evidence in eradicating crime, without trying to first use other instruments as evidence in criminal cases. (Supriadi W Eddyono 2012).

From a constitutional point of view, wiretapping to uncover a crime is an exception that can be justified. This is because the freedom to communicate and obtain information as stipulated in Articles 28F and 28G of the 1945 Constitution of the Republic of Indonesia are not articles that cannot be deviated under any circumstances. (Polimpung, Rompis, and Viany 2019).

Wiretapping is considered to violate human rights, when it is carried out in the interest of disclosing cases, especially cases of corruption. In other words, human rights violations occur if the wiretapped results are used for interests other than law enforcement. Because wiretapping is still considered the most effective action in uncovering corruption cases. Just as the KPK's success in dismantling corruption scandals is synonymous with its success in tapping the conversations of the perpetrators. As long as the KPK is wiretapping for the sake of law and disclosing criminal cases, this is not a violation of human rights. Wiretapping cannot be carried out by random people except for reasons justified by law, because many people wiretapping with evil intentions or for their own interests and want to criminalize other people. Wiretapping must be in accordance with the rules stipulated by the applicable laws and regulations (Sumarni 2020).

Corruption cases that are developing in today's society are increasingly massive and can be found in various structures of people's lives. However, until now the Attorney General's Office itself still has various limitations in handling corruption cases, both in terms of supporting infrastructure, human resources, and there are even views about the public's distrust of the integrity of the legal apparatus. Whereas on the other hand the development of types of corruption as well as an increase in the quantity and quality of its modus operandi will occur in the future. It will not only involve high ranking officials, but also public officials and business people. Future corruption crimes cannot be separated from the dynamics of business and economic development which conspire with the authorities owned by public officials, with a more sophisticated mode. This requires the Attorney General's Office to be able to increase its competence in order to continue to be able to manage its capacity as a driving force in efforts to eradicate corruption. For this reason, there is a big challenge for the Attorney General's Office to be able to improve the competence and integrity of its institution so that it is able to carry out efforts to eradicate corruption systematically and utilize the authority it has to minimize the potential for corruption. The Attorney General's Office must also be able to sort out corruption cases in sectors that are qualified as sources and main nodes of corruption whose impact is very detrimental to the interests of the state and society.

Therefore, the revision of RI Law No. 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia is an urgency considering that this law was made since 2004 which has not been able to accommodate legal developments, such as National Law and International Law, Constitutional Court Decisions, New Doctrine, and needs community law, as well as the development of information technology, so that this change becomes urgent to do.

Strengthening the institution and authority of the Attorney General's Office is very important in efforts to face the challenges of law enforcement in the future which are increasingly complex, complicated and dynamic while still protecting human rights principles, and in line with new developments in universal legal principles. Therefore, wiretapping within the criminal law framework must be carried out by means of lawful interception, which means that wiretapping and surveillance of communication activities must be carried out legally according to law and carried out by government agencies that have the authority determined by certain regulations to individuals or groups. Wiretapping can be said to be a lawful interception if it is based on adequate technical regulations. If law enforcement officials carry out a wiretapping without being based on applicable legal principles and on clear procedures, illegal wiretapping or unlawful interception will occur.(Supriadi W Eddyono 2012).

So, it is necessary to make efforts to strengthen the authority of the prosecutor's office in carrying out ideal wiretapping, so revision of Law RI No. 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia is deemed to have deficiencies, so it is necessary to optimize the implementation of state power in the field of law enforcement that is independent and free from the influence of party power. either can be fulfilled. Because of this, it is deemed necessary to immediately draft a Prosecutor's Law in terms of substance in order to accommodate the growing legal needs of society, especially in cases of corruption.

1. **Conclusion**

The authority of the prosecutor's office in wiretapping criminal acts of corruption in RI Law No. 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia has not yet been regulated regarding the prosecutor's authority in wiretapping criminal acts of corruption, however, the prosecutor's authority in conducting wiretapping on corruption is regulated in another law, namely the Law RI No 19 of 2016 concerning Electronic Transaction Information. The authority of the prosecutor's office in wiretapping corruption in the future is to revise RI Law No. 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia which gives authority to the prosecutor's office in wiretapping corruption crimes for the sake of the effectiveness and efficiency of the Attorney's performance, because the accuracy of wiretapping results can accountable, so as to optimize the handling of corruption cases by the Attorney General's Office of the Republic of Indonesia.

**References**

Adang, Yesmil Anwar &. 2011. *Criminal Justice System*. Bandung: Widya Padjadjaran.

Ang, Debby Natalia. 2015. “Juridical Review of Expansion of Evidence of Wiretapping in Corruption Crimes.” *Lex Crimen* Vol. IV/No 1/January-March 2015.

BD, Simarsitas. 2000. *The Prosecutor's Position in the Criminal Justice System Which Guarantees More Justice and Legal Certainty*. Jakarta: Center for Research and Development at the Attorney General's Office of the Republic of Indonesia.

Fauzi, Ahmad, Abdul Madjid, Nurini Aprilianda, and Prija Djatmika. 2021. “The Legislative Ratio of the Existence of Corruption Courts in the Indonesian Criminal Justice System.” *Journal of Legal Horizons* 12(1): 11–20.

Kristian dan Yopi Gunawan. 2013. *A Little About Wiretapping in Positive Law in Indonesia*. Bandung: Nuansa Aulia.

Kristiana, Yudi. 2006. *Prosecutor's Independence in Corruption Investigations*. Bandung: Citra Aditya Bakti.

Maidin Gultom. 2018. *Prosecutor's Independence in Corruption Investigations*. Bandung: Refika Aditama.

Makarim, Edmon. 2004. *Legal Complications of Telematics*. Jakarta : PT Raja Grafindo Persada.

———. 2005. *Introduction to Telematics Law A Compilation of Studies*. Jakarta: Raja Grafindo Persada.

Makawimbang, Hernold Ferry. 2014. *State Financial Losses in Corruption Crimes, A Progressive Legal Approach*. Yogyakarta: Thafa Media.

Maringka, Jan s. 2018. *Attorney Reform in the National Legal System*. Jakarta: Sinar Grafika.

Marpaung, Leden. 2009. *Process of Handling Investigation and Prosecution Criminal Cases*. Jakarta: Sinar Grafika.

Pakpahan, Aknolt Kristian, Albert Triwibowo, and Raden Roro Mirna Astari Magetsari. 2018. “Eradication of Corruption and Political Will in Indonesia.” Journal of Defense & State Defense 3(1): 37–68.

Polimpung, Reinaldy P., Tonny Rompis, and Liju Zet Viany. 2019. “The Authority of Investigators to Conduct Wiretapping in Corruption Crimes According to Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning the Eradication of Corruption Crimes.” *Lex Crimen* Vol. VII/No 3/Mei/2019.

Sumarni, Abdul Tayib dan. 2020. “The Authority of the Corruption Eradication Commission in Carrying out Wiretapping Actions According to Law Number 19 of 2019 concerning the Corruption Eradication Commission.” *Unizar Law Review* Volume 2 (I) Juni 2020.

Supriadi W Eddyono. 2012. *Rearranging Wiretapping Laws in Indonesia*. Jakarta: Institute For Criminal Justice Reform.