



Komisi Pemberantasan Korupsi Wiretapping Authority After The Revision Of Law Number 19 Year 2019 Regarding The Corruption Eradication Commission

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ARTICLE INFO	ABSTRACT
<p>Keywords: KPK; Supervisory Board; Wiretapping</p> <p>How to cite: Fahririn. (2020). Komisi Pemberantasan Korupsi Wiretapping Authority After The Revision Of Law Number 19 Year 2019 Regarding The Corruption Eradication Commission <i>Veteran Law Review</i>. 3(2). 82 - 93</p>	<p>The formation of the Supervisory Board is based on Law Number 19 of 2019 which is a revision of Law Number 30 of 2002. Wiretapping in the aspect of law enforcement is crucial because it relates to restrictions on human rights, especially personal freedom (privacy rights) and how to position the Council. Supervisor in the criminal justice system in Indonesia. In this paper, the research method used is the normative legal research method by using a statutory approach, which understands the hierarchy and principles in laws and regulations and a conceptual approach. This study aims to provide an understanding of the duties of the supervisory board in corruption and the implementation of wiretapping after the KPK Law Amendment. This research concludes that the new KPK Law Revision is considered as an effort to weaken the KPK institution. Several articles show the narrow space for the KPK in Corruption Eradication which should place on the ideals and goals of the nation, but instead lead to policies that weaken the eradication of corruption.</p> <p>Copyright ©2020 VELREV. All rights reserved.</p>

1. Introduction

Indonesia is one of the countries in the world that is experiencing development. One of the characteristics of this development is the number of development programs and developments in various areas of social life. The developments mentioned above, for example, can be seen in developments in the field of science and technology or what we call science and technology, as well as developments in the field of information and communication which are very rapid and unstoppable today which will have an impact on all aspects or all joints of people's lives. ¹

The use of information and communication technology in the reformation era and globalization era has contributed greatly to social, economic, political and even cultural changes. These changes can be seen from the life of Indonesian society which is currently very dependent on and greatly affects the

¹ Kristian & Gunawan, Yopi. (2013). *Sekelumit tentang Penyadapan dalam Hukum Positif di Indonesia*. Nuasa Aulia. (pp. 1).

advancement of existing technology and information. In this case, technological advances are the cause of many crimes, causing problems for humans and developments in committing crimes.

Human existence is certainly inseparable from the laws that rule it, because human life will be balanced and in harmony with the implementation of a law.² Facing the negative effects of globalization, namely the globalization of crime and an increase in the quantity and quality of crimes or criminal acts, of course law, especially criminal law, must again take its role as a means or means of regulating public order and restoring balance in the life of society, nation and state.³ In order to keep pace with the development of technological knowledge that occurs in society, law enforcers carry out legal reforms to overcome all problems that occur in society. Therefore, the longer and stronger the pressure to reform the law in exposing criminal acts. This includes the legal policy regarding wiretapping, the results of which will be used as evidence in the context of investigations to deal with organized and structured criminal acts such as corruption, terrorism and so on.

Corruption has never been separated from the attention of the public and law enforcement officials, both in the development of the case and in the law enforcement process. Corruption is a criminal act categorized as an extraordinary crime in which the process of investigation and law enforcement is also carried out in an extraordinary manner or in a way that is different from the process of investigating criminal acts in general. Criminal acts of corruption Organized and structured crime carries a very large risk, and has its own standards, separate codes that are difficult for law enforcement officers to penetrate. Therefore, in dealing with this criminal act, law enforcement officials generally use surveillance and wiretapping techniques. The selection of deep tapping as one of the extraordinary ways as a means of disclosing criminal acts among the rampant advances in technology today, which at first is often used tapping is indoor tapping because telecommunications facilities have not experienced significant development.

Tapping is a very effective tool in exposing a crime. However, on the other hand, apart from having a use in law enforcement, wiretapping also tends to violate human rights. Not only that, wiretapping has also received a lot of attention because of the potential for abuse of authority committed by the KPK, because so far there has been no limitative regulation as a reference for the KPK in wiretapping.⁴ The authority of each law enforcement apparatus in wiretapping varies. This can be seen in the criminal act of corruption handled by the Police, Attorney General's Office and the KPK, the implementation of wiretapping or interception is only based on the SOP (Standard Operational Procedure) of each agency. So that the interception or wiretapping which may be carried out without sufficient preliminary evidence, without court permission and without a time limit for interception, then the results of the

² Marpaung, Leden. (2009). *Proses Penanganan Perkara Pidana (Penyelidikan dan Penyidikan)*. Sinar Grafika. (pp. 2).

³ Kristian & Gunawan, Yopi. Op. cit. (pp. 9).

⁴ Fahrojih, Ikhwan. (2016). *Hukum Acara Pidana Korupsi*. Setara Press. (pp. 48).

interception are submitted to a court hearing, making the panel of judges hearing the case have no obligation to reject the evidence.

The legal position of proof, especially regarding the evidence of wiretapping results, will be in a dilemma. On the one hand, so that the law can always keep up with the times and technology, it is also necessary to have legal recognition of various types of digital technology developments to function as court evidence. However, on the other hand, there is a tendency to manipulate the use of digital evidence by irresponsible parties, causing the law not to be free to recognize the digital evidence. Digital evidence is often referred to as "the law of the best evidence" (best evidence rule), but a digital evidence is difficult to accept in proof⁵

Even though the matter of wiretapping has been strictly and clearly regulated in the respective laws, provisions and decisions of the Constitutional Court as stated above, there is still a legal vacuum (*recht vacuum*) in the field of wiretapping. The legal vacuum is none other than due to the many uncertainties regarding the concept of wiretapping, uncertainty regarding the procedures and (technical) mechanisms of wiretapping, or even overlapping regulations (*norm dualism*) so that what happens in the field is not a legal certainty but will create uncertainty which of course will be very affect its implementation (application stage and execution stage). In positive law in Indonesia, as a juridical basis that regulates and legitimizes this tapping action has been regulated in several provisions. These provisions can be translated into 3 major parts, namely the current provisions in the decisions of the Constitutional Court and in the Regulation of the Head of the National Police of the Republic of Indonesia Nomor 05 Tahun 2010 about *Tata Cara Penyadapan Pada Pusat Pemantauan Kepolisian Negara*.

One of the institutions that has the authority to carry out wiretapping is the KPK. The regulation on wiretapping is currently still being debated in the process of legal discovery. Prior to the amendment of the KPK Law, the regulation of wiretapping was regulated in UU KPK, which has special powers in exposing criminal acts of corruption which are directly supervised by a supervisory committee. With a composition of elements from the KPK, the Ministry of Communication and Information Technology, and the telecommunications operator. Meanwhile, after the KPK Law was changed to Law Number 19 year 2019 about KPK.. The amendment to the KPK Law also changes several articles including and regulations on wiretapping. Undang-undang No. 19 year 2019 Tentang Komisi Pemberantasan Korupsi. Eradication Commission regulates wiretapping with the establishment of the Supervisory Board.

The practice of corruption in Indonesia is still an act that leads to beyond the law. This is due to many determining factors, including power and the strength of economic power where the influence of economic power (conglomerate) and bureaucratic power as general power (bureaucratic

⁵ Fuady, Munir. (2006). *Teori Hukum Pembuktian (perdata dan pidana)*. Citra bakti (pp. 37).

officials) has positioned the status beyond the law ⁶. This situation is exacerbated by the presence of counter resistance, especially by corruptors and those who are indicated by corruption, to weaken efforts to eradicate corruption. Therefore, in the context of dealing with corruption, a number of regulations on criminal acts of corruption were determined, such as the Undang-Undang Hukum Pidana (KUHP), Undang-Undang No.3/1971 about Pemberantasan Korupsi was later amended by Undang-Undang No. 31/1999 and amended again by Undang-Undang No. 20/2001. As mandated in Undang-Undang No. 20/2001, a KPK must be formed, so the DPR together with the President enacted Undang-Undang No. 30/2002 the KPK and amended Undang-undang No. 19/2019 about KPK.

The revision of the latest KPK law is a form of policy change that raises many questions and doubts for law enforcers in eradicating Corruption and at the same time reflects the country's legal politics regarding the direction of future corruption eradication policies. The priority of eradicating corruption was the most important mandate of the reform movement when it overthrew the New Order regime which was considered to be full of corruption, collusion and nepotism. The mandate of the 1998 reform movement longed for the presence of a state that was free from corruption, collusion and nepotism which was then stated in a joint consensus in the form of the Decree of the People's Consultative Assembly of the Republic of Indonesia (TAP MPR) Number XI /MPR/1998 concerning State Administrators who are Clean and Free of Corruption, Collusion, and Nepotism. The MPR Decree is still in effect until now and is used as a basis for "remembering" the formation Undang-Undang No. 31 year 1999 about Pemberantasan Tindak Pidana Korupsi.

The legislative policy in revising the KPK law has become a polemic and has caused upheaval from various parties. The public, practitioners and academics see that the revision of the law is very hasty, discussed at the wrong time because the term of office of members of the DPR will end on September 30, 2019 and in substance, the amendment of the law will actually cause new problems in the future. particularly related to the eradication of criminal acts of corruption. Based on these considerations, the public then considered that the resulting revision actually showed a legal condition that was far from being determined to fight corruption and felt as weakening the position and authority of the KPK.

2. Method

In this paper, the research method used is the normative legal research method by carrying out a statutory approach (statutory approach), which understands the hierarchy, and the principles in statutory regulations. Conceptual approach A conceptual approach that departs from existing legal rules and is compiled based on secondary data consisting of primary, secondary and tertiary legal materials which are then analyzed qualitatively and presented

⁶ Adji, Indriyanto Seno. (2019). *Memahami Hukum*. In book Satya Arinanto. (pp. 164). Raja Grafindo Persada.

descriptively in legal science. regarding the regulation of KPK wiretapping authority

3. Main Heading of the Analysis or Results

3.1. Substance of Changes in the Revision of Law Number 19 Year 2019 Regarding The Corruption Eradication Commission

The revision of the new KPK Law is seen as an effort to weaken the KPK institution. Several articles show the narrow space for the KPK in Corruption Eradication which should place the ideals and goals of the nation, but instead lead to policies that weaken the eradication of corruption itself, even further than that, which is taking sides with the perpetrators of corruption. There are at least a number of notes in the revision of the law that it is suspected that the corruption eradication agenda is very weak, namely

First, regarding the institutional status of the KPK, which changed from being an independent state institution to a state institution in the executive clump. Initially, the KPK and other state institutions had different functions. Several institutions are supportive in nature and simultaneously carry out regulatory, administrative and punitive functions. But after the amendment to the KPK Law, institutions such as the KPK are carrying out a mixed function of regulatory functions, administrative functions and punitive functions, now they are carried out simultaneously. The consequence of the birth of this independent state institution is the transfer of the functions of power that are usually inherent in the functions of the executive, legislative and even judiciary institutions to the functions of other organs that are independent in nature. Therefore, sometimes these new institutions carry out functions that are mixed and each of them is independent (independent bodies). The establishment of a state aid agency called the KPK, which carries out law enforcement functions to eradicate corruption, which has been attached to the executive branch of power, namely the Police and the Attorney General's Office. So far, the two executive institutions have been deemed not optimal in carrying out their function in law enforcement in corruption cases and have even become a separate problem in the vortex of corruption in Indonesia. The change in the role of the executive to another independent institution is in accordance with the considerations and basis for the establishment of the KPK as stated in Article 43 of Law Number 31 Year 1999 which requires the establishment of an independent KPK which is given the task and authority to eradicate acts. corruption crime.

The implementation of KPK duties is categorized as part of the executive family, so that the KPKP is part of the DPR's inquiry authority. This is the content of the Constitutional Court decision No. 36/PUU-XV/2017 and No. 40/PUU-XV/2017. This decision is the basis for arguments by the DPR and the Government in amending the KPK (KPK) law. Placing the KPK in the executive power clump will make it difficult to exercise the authority to prosecute and prevent Corruption. KPK employees are not independent in

terms of their duties because they have to deal with the government. Of course, it will be difficult to be critical and logical later.

The KPK institution will be very easily used to suppress the opposition by taking actions that appear selective and political in nature. The KPK will no longer have the courage to take action against state administrators who come from the ruling party and / or from the circles of power. This makes the position of the KPK as similar to that of 2 (two) other state institutions (the Police and the Attorney General's Office) which have been considered mediocre in terms of handling corruption cases. The President and DPR seem to have neglected the fact that in every implementation of their duties, the KPK will always be in touch with and rub against state administrators in the realm of executive, legislative or judicial power⁷

Second, regarding the KPK, it can issue an Order to Stop Investigation (SP3). The Criminal Procedure Law (KUHAP) states that an investigation is a series of investigators to find and collect evidence with this evidence to make clear the criminal act that occurred and to find the suspect. This is different, as in Article 44 of Law No.30 of 2002 before the revision it states that in order to raise the status of a case from investigation to investigation it is necessary to find 2 (two) sufficient pieces of evidence. This article explains that the KPK Law implements the principles of criminal law, namely the principle of presumption of innocence and safeguarding human rights. In the criminal procedure process, the determination of a suspect must have 2 (two) pieces of evidence first. Determination of suspects is also through the case title procedure which is attended by investigators and public prosecutors as well as KPK leaders. Whether or not the determination of the suspect is legal, is carried out through a pretrial mechanism where the trial is open to the public and all parties can directly supervise and follow the proceedings in a transparent manner. If in the process of investigating or prosecuting the evidence used is sufficient to ensnare the suspect / defendant, the KPK may pursue a free prosecution or escape from legal charges. So with this the KPK no longer needs a Termination of Investigation (SP3) for investigators and / or investigators who abuse their authority or "play" the cases they handle. The integrity of KPK investigators will be disrupted and become an opening for corruptors with the discretion of SP3. Even if SP3 must be given authority, then the authority is only for suspects who have died or who have experienced an "unfit to stand trial" or it can be interpreted that they are seriously ill and / or mentally retarded so that they cannot be held accountable for the crimes they have committed and of course all of that must be accompanied by an examination. independent and competent health workers

The Decision of the Constitutional Court (MK) Number 21/PUU-XII/ 2014 states that the pretrial object is expanded, which includes the validity of the determination of the suspect, searches and confiscation. Determination of suspects who do not meet the due process of law at the KPK should be examined in a pretrial hearing which is open to the public, not through the

⁷ Yulianto. (2020). "Politik hukum revisi undang-undang KPK yang melemahkan pemberantasan korupsi". Jurnal Cakrawala. Vol. 11. (pp. 16) Access On Agust 10

issuance of an SP3. Corruption is a crime that is structured, involving many parties, using domestic and foreign financial institutions and even across national borders. The complexity of investigating corruption is very diverse and cannot be compared to general crimes so that it is understandable that certain cases cannot be resolved in 2 (two) year⁸

Third, regarding the KPK which is unable to open a representative office. The substance of this rule becomes a question if it is related that the number of corruption cases in Indonesia does not only occur in big cities but also in remote areas or all Indonesian regions. This requires an extension of the hand or broader authority for the law enforcement process in eradicating criminal acts of corruption. When viewed from the territory of Indonesia which consists of several islands and a population of 260 million people, it will be an obstacle later in the implementation of the KPK's duties, namely preventing and eradicating corruption. This is considered impossible when viewed from the number of investigators of approximately 110 (one hundred and ten) people and the number of employees of around 1500 people who can handle the noble work and mission of eradicating corruption.

Fourth, regarding changes in the status of staffing positions at the KPK. This is an impact of institutional changes that were initially independent, now under the supervision of the executive as well as other state institutions such as the Attorney General's Office and the Police. Prior to the revision of the KPK Law, KPK personnel management was managed professionally and independently with clear performance measures and now the result has changed to become the KPK employee status which must comply with the State Civil Apparatus Law and every policy of transfer and rotation of positions must be oriented to the Ministry of Civil Apparatus Country. This will certainly eliminate the independence of the KPK, because in the future it does not rule out the possibility that regulations for ASN in general also apply to KPK employees such as being transferred or transferred in accordance with the orders and wishes of the government in power. This is an opening for money corruption perpetrators to intervene KPK employees with a circle of power and use the excuse of employee transfers and rotation.

3.2. The process of wiretapping after the amendment of Law Number 19 Year 2019 Regarding The Corruption Eradication Commission

In principle, tapping is an activity or practice that violates human rights, namely the right to privacy in communicating. According to Article 32 of Law Number 39 Year 1999 concerning Human Rights (HAM), everyone has the right to freedom and confidentiality in correspondence, including communication through electronic means that cannot be disturbed, except by order of a judge or other legal authority accordingly. with the provisions of statutory regulations. However, as stipulated in Article 32 of the Human Rights Law and Article 28 J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the state can impose restrictions on the means of secret

⁸ Ibid, (pp. 10)

communication in the context of law enforcement. The regulated restrictions are in the form of wiretapping which can only be implemented based on the authority given and regulated in law. The KPK is given extraordinary powers compared to the authority of other law enforcement officials, for example the KPK based on article 12 paragraph (1).) Undang-Undang No. 30 year 2002 KPK has been given the authority to carry out interception and record talks in the context of investigating, investigating and prosecuting tasks.

Wiretapping is a method used by several state institutions in the process of arresting a criminal act, not only the KPK, there are other state institutions that also use this method, such as the police, prosecutors and the State Intelligence Agency. Prior to the amendment to the KPK Law, the issue of wiretapping brought pros and cons and questions regarding rules that clearly and urgently urged the legislature to make separate regulations regarding wiretapping not just an Operational Standard or Presidential regulation but made into a law. But after the revision of the latest KPK Law, there was a change in the regulation of supporters, namely the KPK Supervisory Board (Dewas) permit. The wiretapping permit is granted after the KPK leadership submits a written letter.

Dewas can provide written permission within 1x24 hours from the time the request was submitted. The wiretapping process is limited to a maximum of 6 (six) months after the written permission given by Dewas received by the KPK. The results of wiretapping are confidential and are only for judicial purposes related to corruption cases. This new rule changes Article 12 letter a of the KPK Law, in which the KPK has the authority to wiretap and record conversations. Article 12 of the KPK Law does not contain provisions on the time limit for wiretapping or the requirement for KPK to request adult permission. Fourth, KPK employees have ASN status.

Amendments to the KPK Law which places the KPK as part of a state institution in the executive family that carry out the task of preventing and eradicating corruption crimes indirectly also change the status of KPK employees to ASN by becoming ASN, KPK employees must comply with Law no. 5 of 2014 concerning the State Civil Apparatus (ASN Law). This new rule changes Article 24 paragraph (2) of the KPK Law, in which KPK employees are Indonesian citizens who because of their expertise are appointed KPK employees. Apart from the debate, the revision of the KPK Law needs to be interpreted not as an effort to weaken the KPK but rather as strengthening the KPK. In the revision of the KPK Law, it is stated that the KPK is a state institution in the executive family whose duties and powers are independent and free from the influence of any power. The entry of the KPK into the executive family is basically a change that must be made to conform to the Constitutional Court decision No. 36/PUUXV/2017, which states that the KPK is part of the branch of government power. This is done so that the position of the KPK in the Indonesian constitutional system becomes clear

Decision of the Constitutional Court (MK) Number 012-016-019 / PUU-IV / 2006 states that restrictions on human rights through wiretapping must be regulated by law in order to avoid abuse of authority that violates human

rights. This Constitutional Court decision mandated that the practice of wiretapping had to be protected by a special law which contained rules, procedures and procedures for granting tapping. The wiretapping law is not only applied to the KPK but also applies to all institutions that currently have the authority to tap or record conversations such as the State Intelligence Agency (BIN), the Strategic Intelligence Agency (BAIS), the Attorney General's Office, the Police and the National Narcotics Agency (BNN). The existence of the KPK supervisory board in granting wiretapping permits is not the expected goal of the ruling of the constitutional court, because the constitutional court demands that the government together with the DPR make a separate law which regulates in detail the rules, permits and procedures of wiretapping in the interests of human rights, not disturbed. The wiretapping law applies not only to the KPK but also to all institutions that have wiretapping authority.

The formation of the Dewas is also very necessary considering that each agency needs a controller when carrying out its duties and authorities. The formation of Dewas is expected to provide clear and measurable boundaries related to the implementation mechanism and the work system of state institutions. The presence of Dewas later expected to work professionally considering Dewas's task in the revision of the KPK Law, in addition to supervising KPK performance as well as wiretapping permits. The application of wiretapping as one of the investigative and investigative authorities has helped many legal processes, but tapping does need to be regulated and supervised in order to reduce and prevent abuse of authority. Moreover, the KPK Law has been in effect for 17 years, so it requires adjustments and arrangements for matters that are not yet clear in the KPK Law. For example, related to wiretapping by the KPK which has never been audited by Kominfo since 2009. This is an impact of the Constitutional Court Decision No. 5 / PUU-VIII / 2010 which states that wiretapping cannot only be regulated by a ministerial regulation but must be regulated by law.

The KPK was formed because the criminal act of corruption in Indonesia was considered widespread so that acts of corruption could no longer be classified as ordinary crimes but had become an extraordinary crime. Law enforcement to eradicate corruption that is carried out conventionally has so far been proven to experience various obstacles. Therefore, the handling of corruption crimes is a deviation from the generally accepted principles of Law Number 8 of 1981 concerning KUHAP. The KPK is given extraordinary powers compared to the authority of other law enforcement officers, for example the KPK based on article 12 paragraph (1) letter a of Law Number 30 of 2002 concerning the KPK has been given the authority to carry out interception and record conversations in the context of the task of investigation, investigation and prosecution. The regulation of interception authority in article 12 paragraph (1) letter a of Law Number 30 of 2002 concerning the KPK is very simple and general because the article does not explain what the definition of interception is, the time of interception and the official who authorizes the interception. This can be seen in Article 39 paragraph (1) of Law Number 30 Year 2002 which reads as follows:

Investigation, investigation and prosecution of criminal acts of corruption are carried out based on the applicable criminal procedural code and based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 unless otherwise stipulated in this law.⁹

The article above does not yet regulate the definition of interception based on article 1 point g Ministerial Regulation Number 11 / PRM Kominfo / 02/2006 dated February 22, 2006 concerning Technical Interception of Information, namely: Lawful interception of information is an activity of interception of information conducted by law enforcement officials for the benefit of controlled law enforcement and the results are sent to the monitoring center belonging to the law enforcement apparatus. The duration of interception is not regulated in Law Number 30 of 2002 concerning the KPK and Ministerial Regulation Number 11 / PRM.Kominfo / 02/2006 dated February 22, 2006 concerning Technical Interception of Information. Thus, KPK in conducting interception is not limited by a period of time so that the KPK only submits one request to conduct interception and the subsequent process is carried out according to the needs of investigations, investigations and prosecutions in corruption cases currently being handled by the KPK or accordingly with the SOP (Standard Operating Procedure) owned by the Corruption Eradication Commission. But until now the SOP of the KPK has not been able to get the author and even the DPR has not been able to obtain it, maybe the level of secrecy from the SOP is so high that the public has no right to know. This is the basis for the formation of the Supervisory Board in the KPK wiretapping when viewed from several perspectives, either from a human rights perspective or in controlling the performance of the Corruption Eradication Commission.

Wiretapping carried out by the KPK until now is still pros and cons in the process of law enforcement, because as a legal state there is a push from the public and aparat law enforcement to make guidelines in conducting wiretaps carried out by the KPK, not only in the form of SOP but should be made in the form of regulations or laws that already have a permanent legal force. This is the basis for the establishment of the supervisory board as a form of law enforcement in order to occur the authority of the KPK but in fact the authority of the supervisory board becomes an obstacle to the KPK in carrying out its authority in eradicating corruption.

4. Conclusion

Based on the discussion that the author has described, the conclusions in this paper are:

1. The revision of the new KPK Law is seen as an effort to weaken the KPK institution. Several articles show the narrow space for the KPK in Corruption Eradication which should place the ideals and goals of the nation, but instead lead to policies that weaken the eradication of

⁹ Undang-Undang No. 30 year 2002

corruption itself, even further than that, which is taking sides with the perpetrators of corruption. At least there are several notes that in the revision of the law it is suspected that it has greatly weakened the corruption eradication agenda

2. The existence of the KPK supervisory board in granting wiretapping permits is not the expected goal of the ruling of the constitutional court, because the constitutional court demands that the government together with the DPR make a separate law which regulates in detail the rules, permits and procedures of wiretapping in the interests of human rights. not disturbed. The wiretapping law applies not only to the KPK but also to all institutions that have wiretapping authority.

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