

ANALYSIS OF THE PROSECUTOR'S WIREBREAKING AUTHORITY IN HANDLING TERRORISM CRIMES

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Abstract

This study analyzes the Attorney General's authority to wiretap in handling terrorism crimes from the perspective of the principle of justice in the Pancasila rule of law and its implications for the protection of human rights. Wiretapping is an exceptional and intrusive law enforcement instrument because it limits the right to privacy and confidentiality of communications. Therefore, its implementation must be based on clear authority, strict legal procedures, and effective oversight mechanisms. This study uses a normative legal research method with a statutory, conceptual, and analytical approach. The analysis was conducted on the Attorney General's Law, the Law on the Eradication of Terrorism Crimes, the new Criminal Procedure Code, and human rights protection instruments. The analytical framework uses the Pancasila rule of law theory, the theory of authority, and the theory of the right to privacy. The results of the study indicate that the Indonesian legal system positions wiretapping as a coercive measure that can only be carried out by institutions that have express authority from the law. The Attorney General's law enforcement intelligence authority does not explicitly include wiretapping authority. In the practice of counterterrorism, the Attorney General's Office plays more of a role as a user of wiretapping results. This lack of clarity in regulations has the potential to create legal uncertainty and the risk of human rights violations. Therefore, regulatory clarification and harmonization are needed to ensure that wiretapping authority aligns with the principles of justice, the Pancasila state based on law, and the protection of human rights.

Keywords: Wiretapping, Attorney General's Office, Terrorism, Pancasila state based on law, Human Rights

INTRODUCTION

Law enforcement against acts of terrorism is a strategic issue in the national legal system, given the extraordinary, organized, transnational nature of these crimes, and their potential for widespread impact on national security and public safety (Arief, 2016). Acts of terrorism not only result in loss of life and material loss, but also create collective fear, disrupt social stability, and undermine public confidence in the state's ability to carry out its protective function. Therefore, the state is required to have legal instruments and law enforcement authorities that are effective, adaptive, and remain within the framework of the rule of law.

The development of modern terrorism demonstrates a shift from conventional methods of action to the use of information and communication technology as the primary means of coordination, recruitment, funding, and action planning (BNPT, 2020). Advances in digital, rapid, and often encrypted communication technology present challenges for law enforcement officials in detecting and preventing terrorist acts early. This situation necessitates the use of law enforcement methods capable of penetrating these closed communication patterns, one of which is wiretapping.

Wiretapping is seen as a strategic instrument in handling acts of terrorism because it allows authorities to obtain information from an early stage, trace communication flows, and map perpetrator networks more accurately (Hamzah, 2016). In practice, wiretapping often serves as the basis for preventative measures, thwarting terrorist acts before they cause casualties. However, the effectiveness of wiretapping as a law enforcement instrument cannot be separated from the issue of legal legitimacy and limitations on state authority, given that this action directly impacts the fundamental rights of citizens.

In Indonesia, wiretapping has a high sensitivity because it is directly related to the right to privacy and guarantee of confidentiality of communications which is constitutionally guaranteed in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The right to privacy is part of fundamental human rights, so that any form of restriction can only be carried out based on law, for legitimate purposes, and through strict and proportional procedures (Asshiddiqie, 2019). Therefore, wiretapping cannot be understood solely as a technical law enforcement action, but rather as a legal action that must be subject to the principles of the rule of law and the protection of human rights.

The urgency of regulating wiretapping has grown even stronger following Constitutional Court Decision No. 20/PUU-XIV/2016, which tested the constitutionality of the wiretapping provisions in the Electronic Information and Transactions Law. In the ruling, the Constitutional Court affirmed that wiretapping constitutes a restriction on citizens' constitutional rights and can therefore only be carried out based on the law, not on subordinate regulations. The Constitutional Court also emphasized that wiretapping must meet the principles of legality, necessity, proportionality, and accountability, and be accompanied by adequate oversight mechanisms to prevent abuse of authority. This ruling has important implications for the entire wiretapping regime in Indonesia, including the authority of the Attorney General's Office to wiretap in handling terrorism crimes.

Within the framework of the Indonesian state system, the principle of the rule of law is explicitly affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the State of Indonesia is a state of law. This provision implies that all actions of state administrators must be based on law and may not be carried out arbitrarily. The principle of the rule of law places law as the commander (supremacy of law) in regulating relations between the state and citizens, including in the use of coercive powers such as wiretapping.

Furthermore, Indonesia's rule of law is not merely a formal state, but rather a state based on Pancasila. A Pancasila state of law integrates the principle of the supremacy of law

with the values of Belief in One Almighty God, just and civilized humanity, unity, deliberation, and social justice. In this context, law enforcement aims not only to create legal certainty but also to ensure substantive justice and respect for human dignity (Muladi, 2002). Therefore, the exercise of wiretapping authority must be placed within a framework of balance between state security interests and the protection of human rights.

The balance between national security and human rights protection is a key characteristic of a Pancasila state based on the rule of law. The state has a constitutional obligation to protect the entire nation and all of Indonesia's territory from the threat of terrorism, but at the same time, it is also obligated to respect, protect, and fulfill the human rights of its citizens. In this context, restricting the right to privacy through wiretapping can only be justified if it serves a legitimate public interest, is clearly regulated by law, and is implemented proportionally.

The Attorney General's Office of the Republic of Indonesia holds a strategic position within the national criminal justice system. Under Law Number 11 of 2021, the Attorney General's Office not only carries out prosecutorial functions but also has authority in the field of law enforcement intelligence. This authority encompasses preventive and repressive measures aimed at supporting law enforcement, including in handling acts of terrorism. This expanded authority positions the Attorney General's Office as a key actor in efforts to prevent and eradicate terrorism.

On the other hand, the regulation of wiretapping in terrorism crimes is specifically contained in Law Number 5 of 2018, which provides the legal basis for law enforcement officials to conduct interceptions as part of prevention and enforcement efforts. However, this provision focuses more on the authority to wiretap certain investigative officers. Furthermore, wiretapping is also regulated in Law Number 17 of 2011 concerning State Intelligence and Law Number 19 of 2016 concerning Electronic Information and Transactions, each of which regulates wiretapping in different contexts. This fragmentation of regulations has the potential to create disharmony and legal uncertainty, particularly regarding the limits of the Attorney General's wiretapping authority.

From the perspective of a Pancasila state based on the rule of law, wiretapping authority must meet the following basic legal requirements: clear legal basis, strict procedures, oversight mechanisms, and transparent accountability (Hadjon, 1987). Wiretapping can only be justified if it is truly necessary for the public interest and is carried out proportionally. Therefore, a study of the Attorney General's wiretapping authority is important not only from the perspective of effective law enforcement but also from the perspective of constitutional legitimacy and human rights protection.

In a global context, the practice of wiretapping as a law enforcement instrument against terrorism has also become a serious concern in various legal systems of other countries (Freeman, 2018). Many countries face the same dilemma: how to balance national security needs with human rights protection (Wright & De Hert, 2012). On the one hand, states are required to act quickly and effectively to prevent the threat of terrorism, but on the other hand, states are also bound by an obligation to respect citizens' right to privacy as part of universally recognized human rights (Asshiddiqie, 2019). Therefore, the practice of wiretapping in democratic countries is generally strictly regulated by law, accompanied by judicial oversight mechanisms or independent institutions.

International legal instruments, particularly the International Covenant on Civil and Political Rights (ICCPR), affirm that the right to privacy is a right that must be protected by the state (ICCPR, 1966). Article 17 of the ICCPR states that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence. However, the ICCPR also allows states to restrict this right to the extent that it is provided for by law and is necessary to protect legitimate public interests, including national security (UN

HRC, 1988). Therefore, restrictions on the right to privacy through wiretapping must meet strict international legal standards, including the principles of legality, urgent necessity, and proportionality.

In the context of Indonesian national law, the principle of limiting human rights is also regulated in Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that in exercising their rights and freedoms, everyone is obliged to submit to restrictions stipulated by law in order to guarantee recognition and respect for the rights of others and to fulfill demands for justice in accordance with moral considerations, religious values, security, and public order (Asshiddiqie, 2020). This provision confirms that limiting the right to privacy through wiretapping is constitutionally possible, as long as it is carried out legally and proportionally.

However, the existence of various regulations governing wiretapping in Indonesia demonstrates the complexity and potential overlapping authority between law enforcement agencies. Wiretapping is regulated by the Anti-Terrorism Law, the State Intelligence Law, the Electronic Information and Transactions Law, and the Attorney General's Office Law. Each of these laws has different characteristics, objectives, and mechanisms. This situation has the potential to give rise to differing interpretations regarding who is authorized to conduct wiretapping, at what stage wiretapping can be carried out, and the oversight and accountability mechanisms (Arief, 2016).

For the Indonesian Attorney General's Office (AGO), the expansion of its law enforcement intelligence authority, as stipulated in Law Number 11 of 2021, raises important legal questions. On the one hand, this authority is intended to strengthen the effectiveness of law enforcement, including in handling terrorism crimes. However, on the other hand, the lack of explicit and comprehensive regulations regarding the Attorney General's wiretapping authority has the potential to create legal uncertainty. This uncertainty could impact the legitimacy of wiretapping and potentially lead to future legal issues.

In a state based on Pancasila law, the use of state authority must be always placed within the framework of the principles of justice, legal certainty, and expediency. The authority to wiretap as a form of restriction on the right to privacy cannot be separated from the principle of justice, as justice demands a balance between state security interests and the protection of human rights. Therefore, the Attorney General's Office's authority to wiretap must be correlated with the Attorney General's role as a law enforcer, which not only pursues effective enforcement but also ensures the protection of citizens' constitutional rights.

Based on this description, it is increasingly clear that the Attorney General's Office's wiretapping authority in handling terrorism crimes is a complex and multidimensional legal issue. This issue relates not only to the effectiveness of law enforcement but also to constitutional legitimacy, human rights protection, and the consistent application of the Pancasila rule of law. Therefore, this research is crucial in providing a comprehensive and systematic analysis of the Attorney General's Office's wiretapping authority, both from a normative perspective and its implications for human rights protection.

Based on this background, the problem formulation in this study is how is the regulation of wiretapping authority by the Prosecutor's Office in handling criminal acts of terrorism reviewed from the principle of justice in the Pancasila rule of law based on laws and regulations in Indonesia? and how is the implementation of wiretapping authority by the Prosecutor's Office in handling criminal acts of terrorism and what are the implications for the protection of human rights?

RESEARCH METHODS

This research is a normative legal study, focusing on the analysis of applicable positive legal norms (Soekanto & Mamudji, 2014). This study does not utilize empirical data

from the field, but rather examines laws and regulations, legal literature, and doctrines relevant to the Attorney General's wiretapping authority in handling terrorism crimes. This approach is appropriate because the research objects include the authority of state institutions, wiretapping mechanisms, and the implications for human rights, all of which are related to legal norms.

The data in this study consists of secondary data, obtained through library research without conducting field research. Secondary data was chosen because this research is normative, so the primary materials analyzed are legal provisions and literature. This data serves as the primary foundation for analyzing the basis for the Attorney General's wiretapping authority and its implications for privacy rights.

The data collection technique was conducted through library research, which involved searching legal documents, books, journals, and regulations relevant to the Attorney General's wiretapping authority (Soekanto & Mamudji, 2014). This technique aligns with the characteristics of normative research, which relies on secondary data as the primary source of analysis. All documents were systematically reviewed to obtain a comprehensive picture of the regulation of wiretapping under Indonesian law.

RESULT AND DISCUSSION

Regulation of Wiretapping Authority by the Prosecutor's Office Reviewed from the Principle of Justice in the Pancasila Rule of Law State

The regulation of the Attorney General's Office's wiretapping authority in handling terrorism crimes must be analyzed not only from the perspective of existing norms, but also from the perspective of justice in a Pancasila state based on law. A Pancasila state based on law positions the law not merely as a formal instrument of controlling power, but rather as a means to realize substantive justice based on humanitarian values, a balance of authority, and the protection of citizens' rights. Therefore, an assessment of the Attorney General's Office's wiretapping authority cannot be separated from the fundamental question of whether this authority has been regulated fairly, proportionally, and provides legal certainty.

Based on normative research, it can be seen that the regulation of wiretapping in the Indonesian legal system is sectoral and limited. Wiretapping is not granted as a general authority to all law enforcement officials, but rather to certain institutions explicitly designated in the law. In the context of criminal acts of terrorism, Law Number 5 of 2018 grants wiretapping authority with strict requirements and specific oversight mechanisms. This regulatory pattern indicates that lawmakers consciously limit wiretapping authority because such action constitutes a serious restriction on the right to privacy.

However, within the framework of the Indonesian Attorney General's Office, the expansion of functions through law enforcement intelligence authorities as stipulated in Law Number 11 of 2021 is not accompanied by an explicit affirmation of wiretapping authority. Article 30C letter i only states that law enforcement intelligence includes activities to obtain information through specific techniques and methods. This formulation is general and open, thus creating wide room for interpretation. From a justice perspective, this situation actually creates problems because authority that has the potential to limit human rights cannot arise from vague norms.

The principle of justice in a Pancasila state based on the rule of law demands a balance between the interests of law enforcement and the protection of citizens' rights. Justice is not only defined as the effectiveness of crime eradication, but also as a guarantee that the use of state authority is carried out in a controlled and non-arbitrary manner. When the Attorney General's wiretapping authority is not explicitly regulated, an imbalance arises between state power and the protection of individual rights. This situation contradicts substantive justice because it opens the door to the use of intrusive authority without clear legal standards.

Furthermore, the principle of justice is closely related to the principle of equality before the law. In the criminal justice system, law enforcement officials should be subject to equal standards of authority limitations. If certain institutions are granted broad interpretive latitude to carry out intrusive actions, while others are strictly restricted by specific laws, a structurally unfair imbalance of authority arises. This imbalance has the potential to undermine the checks and balances within the criminal justice system and contradicts the spirit of the Pancasila state based on the rule of law.

From the perspective of the theory of authority used in this study, state authority is only legitimate if it is obtained through clear attribution of law. Wiretapping, as an act that limits human rights, cannot be legitimized through extensive interpretation of general norms. Therefore, the phrase "certain techniques and methods" in the Attorney General's Law cannot automatically be interpreted as authorizing wiretapping. Such an interpretation contradicts the principles of legality and justice, as it creates authority without definite procedural limits.

Furthermore, the unclear regulation of the Attorney General's Office's wiretapping authority indicates a normative gap. From the perspective of Pancasila justice, this normative gap regarding intrusive authority is a serious problem. On the one hand, the Attorney General's Office is in a legally precarious position if it conducts wiretapping because it lacks an explicit normative basis. On the other hand, the public is potentially subject to restrictions on privacy rights without adequate legal protection. This situation reflects a double injustice that is inconsistent with the principles of the Pancasila rule of law.

Thus, the results of the discussion indicate that the regulation of wiretapping authority by the Prosecutor's Office in handling terrorism crimes does not fully fulfill the principle of justice in the Pancasila rule of law. The absence of explicit regulations, the potential for broad interpretation of law enforcement intelligence norms, and the absence of clear procedural mechanisms indicate that this authority is not yet within the framework of substantive justice. Therefore, normatively, it can be emphasized that strengthening and affirming regulations are an urgent need so that wiretapping authority, if indeed intended as part of the Prosecutor's Office's authority, has a clear legal basis, is proportional, and is in line with the values of justice in the Pancasila rule of law.

Implementation Wiretapping Authority by Prosecutor's Office And Implications for Human Rights Protection

The Attorney General's Office's exercise of wiretapping authority in handling terrorism crimes requires careful analysis, as it lies at the intersection of the need for effective law enforcement and the state's obligation to protect human rights. Based on normative research, it can be confirmed that the Indonesian Attorney General's Office currently lacks explicit authority to conduct wiretapping independently in terrorism cases. The Attorney General's Office's dominant position is that of utilizing wiretapping conducted by other law enforcement agencies expressly authorized by law.

In the practice of handling terrorism crimes, wiretapping is generally carried out during the investigation and inquiry stages by officers explicitly mandated by law, particularly certain investigators. The results of these wiretappings are then used by the Prosecutor's Office in the pre-prosecution and prosecution processes as evidence or evidence supporting the construction of charges. Therefore, in fact, the Prosecutor's Office acts as a user of the wiretapping results, not as the actual implementer of the wiretapping.

However, the expansion of the Attorney General's Office's functions through law enforcement intelligence authorities, as stipulated in Law Number 11 of 2021, has created new dynamics in practice. This intelligence authority opens up space for the Attorney General's Office to conduct preventive information gathering activities to support law enforcement, including in terrorism cases. In this context, there is the potential for a shift in

practice, namely the possible use of increasingly intrusive information gathering techniques, including wiretapping, although the legal basis for this has not been explicitly stated.

From a human rights perspective, this situation has serious implications. Wiretapping directly restricts the constitutionally guaranteed rights to privacy and confidentiality of communications. Therefore, any wiretapping must comply with the principles of legality, necessity, and proportionality. If a state institution conducts or potentially conducts wiretapping without a clear legal basis, such action risks violating human rights and contravening the principle of due process of law.

The research findings indicate that the unclear regulation of wiretapping authority by the Attorney General's Office has the potential to undermine human rights protection in two key aspects. First, from a procedural perspective, the lack of clear regulations regarding the licensing mechanism, timeframe, and oversight of wiretapping opens up room for uncontrolled actions. In the context of terrorism, which is often handled in emergency situations and under high security pressure, the lack of clear procedures can encourage the use of excessively repressive approaches.

Second, from an accountability perspective, wiretapping without an explicit normative basis will be difficult to legally justify. Accountability is a key element in human rights protection because it ensures that any restrictions on rights can be tested and monitored. If wiretapping is carried out or interpreted as part of the Attorney General's law enforcement intelligence authority without specific regulations, the accountability mechanism becomes unclear. This situation has the potential to undermine public trust in law enforcement officials.

Within the framework of a state based on the rule of law, Pancasila, the protection of human rights cannot be separated from the limitations of state power. While the state has a constitutional obligation to protect the public from the threat of terrorism, this obligation must be carried out while respecting the fundamental rights of citizens. Effective law enforcement cannot be used as an excuse to ignore the principles of human rights protection, as this would contradict the values of justice and humanity that underlie the Pancasila state based on the rule of law.

Compared with previous research that tended to view wiretapping as a technical necessity in combating terrorism, this study shows that the primary issue lies in the aspects of authority and accountability. The focus is not simply on whether wiretapping is necessary, but rather on who has the authority and how it is carried out. This approach demonstrates that without clear authority, wiretapping has the potential to transform from a legitimate legal instrument into a human rights violation.

Thus, the implications of the Attorney General's exercise of wiretapping authority on human rights protection are structural, not merely technical. Unclear norms have the potential to create room for privacy violations, undermine the principle of due process of law, and obscure oversight mechanisms. Therefore, human rights protection demands regulatory clarification regarding wiretapping authority, including legal basis, procedures, and oversight.

Based on the above discussion, it can be concluded that the Attorney General's Office's (AGO) use of wiretapping authority in handling terrorism crimes currently remains in a normative gray area. Without clear and structured regulations, wiretapping has the potential to lead to human rights violations and undermine the values of the Pancasila state based on law. Therefore, clarity of authority and strengthening of human rights protection mechanisms are essential prerequisites for effective, fair, and constitutional law enforcement against terrorism.

CONCLUSIONS

Based on the research results and discussion in Chapter IV, it can be concluded that the regulation of wiretapping authority in the Indonesian legal system is positioned as a special and exceptional authority, and can only be exercised by law enforcement agencies that have received explicit attribution of authority through law. Wiretapping is not positioned as a general authority in the criminal justice system, but rather as a form of restriction of rights subject to the principles of legality, proportionality, and accountability.

In the context of the Indonesian Attorney General's Office, although Law Number 11 of 2021 provides for expanded functions through law enforcement intelligence authorities, the regulation does not explicitly include wiretapping within the Attorney General's authority. This lack of clarity indicates a regulatory gap that could potentially lead to differing interpretations and legal uncertainty.

From the perspective of the principle of justice in a state based on the rule of law, Pancasila does not reflect substantive justice, as intrusive authority over privacy rights should be granted clearly, limitedly, and controlled. Therefore, the regulation of wiretapping authority by the Attorney General's Office in handling terrorism crimes does not fully meet the principles of justice, legal certainty, and limited power as required by a state based on the rule of law.

This study concludes that in the practice of handling terrorism crimes, the Prosecutor's Office does not directly carry out wiretapping, but rather acts as a user of the wiretapping results conducted by other law enforcement officials with explicit authority under the law. However, the existence of law enforcement intelligence authorities without clear normative boundaries creates the potential for an expansion of the practice, which could have implications for human rights protection.

The unclear regulation of wiretapping authority has the potential to open up opportunities for privacy violations, undermine the principle of due process of law, and complicate legal oversight and accountability. In the context of a Pancasila-based state based on the rule of law, this situation risks upsetting the balance between national security interests and the protection of human dignity.

Thus, it can be emphasized that without firm, measurable regulations accompanied by an effective monitoring mechanism, the authority to wiretap by the Prosecutor's Office has the potential to have serious implications for the protection of human rights in handling acts of terrorism.

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