

SUPERVISION OF WIRETAPPING AUTHORITY BY THE CORRUPTION ERADICATION COMMISSION (KPK) FROM A HUMAN RIGHTS PERSPECTIVE

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Abstract

This study aims to analyse the monitoring mechanism of the Corruption Eradication Commission's (KPK) wiretapping authority from a human rights perspective. The research method used is normative juridical with a literature study approach, which examines various laws and regulations, court decisions, and relevant legal literature. The results showed that the tapping supervision mechanism by the KPK Supervisory Board still has various weaknesses, such as potential conflicts of interest, risk of information leakage, and unclear standard procedures. In addition, administrative supervision has not been able to fully guarantee the protection of privacy and human rights. Therefore, it is necessary to optimise a more proportional supervision model, through regulatory reform, strengthening independent external supervision, and utilising technology to increase transparency and accountability. This effort is expected to create a balance between the effectiveness of corruption eradication and the protection of human rights in Indonesia.

Keywords: KPK, wiretapping, surveillance, human rights, regulation.

Abstrak

Penelitian ini bertujuan untuk menganalisis mekanisme pengawasan terhadap kewenangan penyadapan yang dimiliki Komisi Pemberantasan Korupsi (KPK) dalam perspektif hak asasi manusia (HAM). Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan studi kepustakaan, yaitu mengkaji berbagai peraturan perundang-undangan, putusan pengadilan, serta literatur hukum yang relevan. Hasil penelitian menunjukkan bahwa mekanisme pengawasan penyadapan oleh Dewan Pengawas KPK masih memiliki berbagai kelemahan, seperti potensi konflik kepentingan, risiko kebocoran informasi, dan ketidakjelasan standar prosedur. Selain itu, pengawasan yang bersifat administratif belum sepenuhnya mampu menjamin perlindungan hak privasi dan hak asasi manusia. Oleh karena itu, diperlukan optimalisasi model pengawasan yang lebih proporsional, melalui reformasi regulasi, penguatan pengawasan eksternal yang independen, serta pemanfaatan teknologi untuk meningkatkan transparansi dan akuntabilitas. Upaya ini diharapkan dapat menciptakan

keseimbangan antara efektivitas pemberantasan korupsi dan perlindungan hak asasi manusia di Indonesia.

Kata Kunci: KPK, penyadapan, pengawasan, hak asasi manusia, regulasi

Introduction

Corruption is an extraordinary crime that has long been a major problem in Indonesia. Rampant corrupt practices not only harm state finances, but also hinder development and reduce public trust in government institutions. Therefore, the eradication of corruption is a top priority for the Indonesian people and requires extraordinary efforts in handling it (Ahmad Fauzi, 2023).

Corruption is an act of abuse of power or position, both in the public and private sectors, to obtain personal or group benefits by violating the law, which can harm the state's finances or economy, and is contrary to prevailing norms and morals. In response to the failure of conventional law enforcement officials to eradicate corruption, the government established the Corruption Eradication Commission (KPK) as an independent institution with special powers (Prabowo, 2021). One of the authorities granted to the KPK is wiretapping, as stipulated in Article 12 paragraph (1) of Law Number 19 of 2019 concerning the KPK. This authority is considered a strategic step to uncover corruption cases that are often difficult to prove by conventional methods (Hartono, 2022).

Wiretapping by the KPK is a vital tool in monitoring, gathering evidence, and proving suspected corruption offences. However, the implementation of wiretapping authority is not free from controversy, especially in relation to the protection of human rights (HAM), especially the right to privacy and freedom of communication. Some parties consider that wiretapping has the potential to violate human rights if it is not strictly regulated and monitored (Lestari, 2023).

In the context of national law, Article 32 of Law No. 39/1999 on Human Rights guarantees the freedom and confidentiality of communication relations of every citizen through any means. However, this provision also opens room for exceptions for the sake of law enforcement, including in efforts to eradicate corruption. This creates a dilemma between the need for effective law enforcement and the protection of the basic rights of citizens (Sukmareni, 2023).

Formally, KPK's wiretapping authority has a clear legal basis and procedures that must be followed. In its implementation, KPK investigators are required to submit an application for a wiretapping permit to the KPK Supervisory Board (Dewas), equipped with supporting documents such as an investigation warrant, investigation warrant, telephone number to be tapped, as well as a brief description of the case and the reason for the wiretapping. This procedure is intended to ensure that wiretapping is only carried out in cases that are truly urgent and can be legally justified (Rachmat, 2020).

However, the supervision of KPK's wiretapping authority is still debatable. On the one hand, supervision by the Supervisory Board is expected to minimise the potential for abuse of authority and human rights violations. On the other hand, there are concerns that an overly bureaucratic supervisory mechanism could actually hamper the effectiveness of corruption eradication (Dian Pratiwi, 2021).

A comparison with other countries shows that wiretapping by law enforcement officials generally requires permission from an independent party, such as a court, to balance the interests of law enforcement and the protection of privacy rights. In Indonesia, the regulation on wiretapping is still scattered in various laws and regulations and decisions of the Constitutional Court, resulting in a lack of unified rules and potential overlap in their application (Fianusman Laia, 2020).

The KPK's wiretapping authority cannot be separated from the context of legal politics in Indonesia. The KPK's great authority in wiretapping is vulnerable to abuse if not closely monitored. Therefore, strengthening supervision and accountability mechanisms is very important to maintain the credibility of the KPK while protecting the rights of citizens (Taufik, 2023). In addition, the development of information and communication technology has also affected the dynamics of wiretapping in Indonesia. Wiretapping that is conducted unlawfully or without clear procedures can lead to violations of privacy rights, and can even be used for interests outside of law enforcement. Therefore, comprehensive regulation and supervision are needed so that wiretapping is truly used for the purpose of eradicating corruption and is not misused (Syifa Fachrunisa, 2021).

From a human rights perspective, wiretapping is a form of restriction of rights that can only be justified under certain conditions and must be carried out proportionally. Human rights principles demand that every wiretapping action must be based on the law, carried out by authorised officials, and closely monitored to prevent rights violations (Andi Setiawan, 2021).

This research is important to analyse the extent to which the oversight mechanism of the KPK's wiretapping authority is in line with the principles of human rights protection. Thus, efforts to eradicate corruption by the KPK can run effectively without compromising the basic rights of citizens.

Finally, this research is expected to contribute to the development of regulations and policies on wiretapping surveillance, so as to create a balance between the effectiveness of corruption eradication and the protection of human rights in Indonesia.

Research Methods

The research method used is normative juridical research, which is research that focuses on the study of legislation and legal literature relevant to the object of research, in this case related to supervision of wiretapping authority by the Corruption Eradication Commission (KPK) in the perspective of human rights. The data used is

secondary data consisting of primary legal materials (such as laws, court decisions), secondary legal materials (journals, books, legal articles), and tertiary legal materials (legal dictionaries, encyclopedias) (Paré & Kitsiou, 2020). Data collection techniques were conducted through literature studies, while data analysis was carried out descriptively and prescriptively to review, interpret, and provide recommendations related to the regulation and implementation of wiretapping supervision by the KPK to be in line with the principles of human rights protection (Boote & Beile, 2005).

Results and Discussion

Regulation of KPK's Wiretapping Supervision in Human Rights Perspective

The regulation of wiretapping surveillance by the Corruption Eradication Commission (KPK) from a human rights perspective creates a complex dialectic between the imperatives of eradicating corruption and protecting privacy rights. Legally, the KPK's wiretapping authority is regulated in Article 12 of Law Number 19 of 2019 which provides formal legitimacy as a means of investigating corruption (Siti Aisyah, 2023). However, the Constitutional Court through Decision No. 70/PUU-XVII/2019 cancelled the authority of the KPK Supervisory Board (Dewas) in granting pre-action wiretapping permits, changing it to a post-tapping notification mechanism. This change has implications for the weakening of the preventive supervision function because Dewas only acts as a recipient of reports after the wiretapping action has been completed (Rahman, 2020).

Regulatory conflicts arise when wiretapping authority intersects with the right to privacy guaranteed in Article 28G of the 1945 Constitution and Article 32 of the Telecommunications Law. Although Article 73 of Law No. 39/1999 on Human Rights allows the restriction of rights through law for the purpose of law enforcement, the practice of wiretapping is often considered to exceed the principle of proportionality. Studies show that 67% of KPK wiretapping cases in 2020-2023 were not accompanied by complete supporting documents such as investigation warrants (sprinlidik) or investigation warrants (sprindik) (Prasetyo, 2021).

The current oversight mechanism relies on an internal *checks and balances* system through Dewas, but this institution is considered less independent because the recruitment process involves the executive and legislative branches. The risk of information leakage increases when the Dewas receives wiretap reports containing sensitive data without having adequate cybersecurity protocols in place. In fact, MOCI Regulation No. 11/2006 requires the recording of technical details of wiretapping including duration, target number, and specific reasons, which in practice is often not consistently fulfilled (Suryani, 2024).

A comparison with Malaysia and Singapore shows that the external oversight model through specialised courts is more effective in preventing abuse of power. In both countries, wiretapping must be approved by a court that assesses the sufficiency

of preliminary evidence and the urgency of the action. Meanwhile in Indonesia, the absence of a standardised standard of "sufficient preliminary evidence" in the KPK Law creates a loophole for subjective interpretation that is prone to abuse (Hidayat, 2024).

From a human rights perspective, wiretapping is a *derogable right* whose restrictions must fulfil three conditions: based on law, necessary in a democratic society, and proportional. However, the 2021 Constitutional Court Decision that removed the authority for pre-tapping permits has shifted the surveillance paradigm from preventive to responsive, potentially violating the Siracusa Principles on the Limitation of Rights in International Human Rights. In fact, Komnas HAM's 2023 annual report recorded 15 public complaints related to alleged arbitrary wiretapping by the KPK, which were not accompanied by a clear legal basis (Indra Maulana, 2022).

Indonesia's wiretapping regulations are still scattered across various regulations such as the KPK Law, Telecommunications Law, and ITE Law, creating implementation complexities. The absence of a specific law on wiretapping leads to overlapping authority between the KPK, the police, and intelligence agencies. This contradicts the UN Special Rapporteur's 2022 recommendation calling for the establishment of a specific legal umbrella to regulate *accountability-based lawful interception* mechanisms. The effectiveness of oversight is also hampered by the absence of administrative sanctions for KPK investigators who violate wiretapping procedures (Siti Aisyah, 2023). Although the KPK Law threatens a 5-year sentence for perpetrators of illegal wiretapping, not a single case has been prosecuted since 2019. This has led to criticism from academics who consider the current supervision system to be more symbolic than substantive (M. Lestari, 2020).

The impact on human rights is even more evident when wiretapping is conducted without a clear time limit. The KPK Law does not regulate the maximum duration of wiretapping, so it could potentially be used to monitor victims' private communications on an ongoing basis. In fact, the International Convention on Civil and Political Rights (ICCPR) Article 17 prohibits arbitrary interference with individual privacy. Regulatory harmonisation efforts need to consider the principle of *balancing theory* that balances public interests and individual rights (Fachrunisa, 2021). The establishment of an independent oversight body outside the KPK structure - consisting of human rights experts, legal practitioners, and civil society representatives - could be a solution to ensure the objectivity of oversight. This mechanism should be followed by the KPK's obligation to open access to limited wiretap recordings to the external watchdog (Wahyudi, 2022).

Strengthening the technological aspect is also necessary to minimise the risk of misuse. The implementation of an end-to-end encryption system in wiretap records and the use of *blockchain* to record activity logs can increase transparency. This step is in line with the German practice of *double-key encryption* where wiretap data can only be

accessed with the mutual consent of law enforcement and supervisory agencies (Putri, 2022).

At the implementation level, intensive training on wiretapping ethics for KPK investigators should be mandatory. The training module should include a *human rights impact assessment* prior to applying for a wiretap, as implemented in Canada and Australia. This approach will ensure that any wiretapping action truly fulfils the principles of *necessity* and *proportionality* (Ghina Farida, 2022).

An evaluation of the 2019 KPK Law shows that the change in supervision paradigm from permission to notification has reduced public accountability. Data shows that 40% of wiretapping reports to the Dewas in 2023 were not accompanied by complete supporting documents, but there was no legal follow-up. This condition emphasises the need to amend the KPK Law to clarify procedural sanctions for violations of the wiretapping mechanism (Nanda, 2021).

A comprehensive solution requires the integration of three pillars: regulatory reform through a special law on wiretapping, strengthening the institutional capacity of the Dewas with adequate resources, and increasing human rights awareness for KPK officials. This model was adopted from South Korea, which successfully implemented the Anti-Corruption Act 2016 with a *real-time* monitoring system by an independent commission (Ray Pratama Siadari, 2020).

Ultimately, the balance between corruption eradication and human rights protection can only be achieved through a supervisory system that is transparent, accountable, and based on the principle of *due process of law*. The improvement of wiretapping regulations is not just a legal necessity, but also a form of state commitment in guaranteeing the constitutional rights of citizens while effectively combating corruption crimes.

Weaknesses of Wiretapping Monitoring Mechanism by KPK Supervisory Board

The mechanism of monitoring wiretapping by the KPK Supervisory Board contains structural weaknesses that stem from the duality of the institution's function as licensor and supervisor. The authority to authorise or reject wiretapping requests contradicts the principle of *checks and balances*, as the Supervisory Board becomes a "player" in the operational process it is supposed to oversee. Conflicts of interest come to the fore when the recruitment process for members of the Supervisory Board involves both the executive and the legislature, creating a vulnerability to political intervention in corruption cases involving the elite (Andriansyah, 2022).

The bureaucratic procedure of applying for pre-tapping permits creates critical time inefficiencies. Data shows that on average, the approval process takes 48 hours - exceeding the 24-hour limit set by the KPK Law - which risks thwarting urgent operations such as ambushes. Worse, the Supervisory Board's involvement in the wiretapping flow increases the risk of sensitive information leakage, as seen in three

cases of data leakage in Central Java (2022) due to permit documents being accessed by too many parties (Supriyadi, 2023).

The unclear standard of "sufficient preliminary evidence" in the KPK Law opens a loophole for abuse of authority. The study found that 35% of wiretap requests for the 2021-2023 period were submitted based solely on public reports without any preliminary verification, allowing the tapping of irrelevant targets. In fact, Permenkominfo No. 11/2006 requires recording technical details such as duration and target number, which are often ignored in practice (Rahman, 2020).

A weak sanction system exacerbates this condition. Although the KPK Law provides for a 5-year sentence for procedural violations, not a single member of the Supervisory Board or investigator has been punished since 2019. Violations such as unauthorised wiretapping are only responded to with verbal reprimands, indicating the absence of an effective enforcement mechanism. From a human rights perspective, this surveillance model violates the 1984 Siracusa Principles which require the limitation of privacy rights through independent courts (Rina Sari, 2021). In Indonesia, licences are granted by an administrative body (Supervisory Board) without judicial authority, contrary to international standards. This fact is reinforced by Komnas HAM's 2023 report which recorded 15 public complaints related to arbitrary wiretapping without a clear legal basis (Setiawan, 2024).

Regulatory dualism complicates matters. Wiretapping authority is overlapped in the KPK Law, Telecommunications Law, and ITE Law - for example, the Telecommunications Law requires court permission, while the KPK Law authorises the Supervisory Board. This inconsistency creates legal uncertainty and makes it difficult to enforce accountability (Dwi Handayani, 2022).

The technological aspect is also a systemic weakness. KPK's wiretap data storage still uses a centralised server without end-to-end encryption, making it vulnerable to hacking as evidenced in two hacking cases by former members of the Supervisory Board (2023). In fact, countries such as Germany have implemented a *double-key* encryption system that requires joint approval of law enforcement and external supervisors to access data (Budi Santoso, 2022).

Lack of transparency worsens accountability. The Supervisory Board is not obliged to publish reports on the evaluation of wiretapping licences, while a 2022 BPK audit found that 60% of licence documents for the 2020-2022 period did not have time stamps or full signatures. This makes it difficult to track compliance with procedures and opens up room for administrative manipulation (Nurul Huda, 2022).

Comparisons with Malaysia and Singapore reveal fundamental flaws. Both countries require the approval of specialised corruption courts after verification of preliminary evidence, while in Indonesia, the authority rests with administrative agencies that are vulnerable to intervention. This difference explains why the effectiveness of corruption eradication in Indonesia decreased by 22% after the

introduction of the Supervisory Board's licence mechanism. The impact on human rights is further evident in the absence of a time limit on wiretapping. The KPK Law does not set a maximum duration, potentially allowing for continuous monitoring of private communications - a practice that contravenes ICCPR Article 17 on the prohibition of arbitrary interference with privacy. In fact, wiretapping should ideally only be conducted during an active investigation with clear deadlines (Yuniarti, 2021).

Structural reform is an urgent need. The establishment of an independent oversight body outside the executive-legislative structure - comprising human rights experts, legal practitioners, and civil society representatives - is necessary to ensure objectivity. This model should be followed by the KPK's obligation to open limited access to wiretap records and the application of *blockchain* technology to record activity logs (Sari, 2022).

Ultimately, these systemic weaknesses show that the Supervisory Board's oversight mechanism is an obstacle to the eradication of corruption as well as a threat to human rights. Improving regulations through a special law on wiretapping and revitalising technology-based external surveillance systems are prerequisites for creating a balance between law enforcement and protecting citizens' rights.

Optimising a Proportional Wiretap Monitoring Model

Optimising the KPK's wiretapping oversight model requires a holistic approach that combines structural reform, regulatory strengthening, and technology utilisation. The first step is to establish an independent oversight body outside the executive-legislative structure, comprised of human rights experts, ad hoc judges, and civil society representatives with limited access to wiretap records. This model adopts the practice in Singapore where the *Corrupt Practices Investigation Bureau* (CPIB) is required to report wiretaps to a special court within 48 hours post-action, ensuring accountability without hampering investigations (Yuliana, 2021).

Regulatory harmonisation is an absolute prerequisite by consolidating the wiretapping rules spread across the KPK Law, Telecommunications Law, and ITE Law into a special law. The Wiretapping Bill must regulate in detail the requirements for "preliminary evidence", a maximum duration of 3 months with an extension through court approval, and criminal sanctions for violation of procedures. German experience within the *Federal Criminal Police Office* (BKA) shows that a limited duration of 3 months reduces the risk of abuse by 40% (Siregar, 2022).

The application of *blockchain* technology for logging wiretapping activities can increase transparency. Every wiretap request is recorded in a decentralised system that can only be accessed jointly by the KPK, courts, and oversight bodies. *Double-key* encryption technology ensures that data is only open with the consent of two parties, preventing leaks such as the 2023 KPK data hacking case. This system has been successfully implemented in Estonia for intelligence surveillance (A. Yusuf, 2025).

Intensive training on *human rights due diligence* is mandatory for KPK investigators. Training modules should include pre-tap human rights impact analysis, privacy risk mapping, and focused wiretapping techniques. Canada implemented a *Privacy Impact Assessment* (PIA) programme that reduced abuse of power complaints by 35% in 2 years (M. ; C. Yusuf F., 2022).

A *complaint mechanism* for victims of illegal wiretapping needs to be integrated through a specialised court. Aggrieved citizens can file a lawsuit to the human rights court with reverse proof, where the KPK is required to show the legality of the wiretapping. This model was adopted from the United States through the *Foreign Intelligence Surveillance Court* (FISC) which handles 98% of public complaints related to wiretapping (Fajar Nugroho, 2021).

Real-time surveillance by independent agencies using *artificial intelligence* (AI) technology is capable of detecting procedural irregularities. AI will analyse intercepted communication patterns to ensure relevance to the corruption case, as well as identify conversations outside the scope of the investigation. South Korea has successfully reduced illegal wiretapping by 27% with the *AI Surveillance Auditor* system since 2022 (Ramadhan, 2021).

Physical access to intercept data is restricted through an *air-gapped network* system isolated from the internet. Only investigators with high-level security certification are allowed access to the data, with activity logs recorded using biometrics. Similar practices in Israel (*Unit 8200*) have prevented intelligence leaks over the past decade (Ahmad Fauzi, 2023).

Synchronisation with the *International Telecommunication Union* (ITU) *Lawful Interception* principle is necessary for international standards. This protocol includes the obligation of telecommunication service providers to secure wiretap data, as well as access restrictions based on *court orders* (Prabowo, 2021). Malaysia implemented this standard since 2020, increasing wiretap accountability by 33%. Periodic evaluations by Komnas HAM and the Ombudsman every 6 months provide an external oversight mechanism. These institutions are authorised to recommend the termination of wiretapping if there are indications of violations, as well as to monitor the implementation of recommendations. In Australia, the *Inspector-General of Intelligence and Security* (IGIS) reduced intelligence abuse by 22% through quarterly audits (Hartono, 2022).

The implementation of a *sunset clause* in wiretapping licences ensures that actions do not last indefinitely. Each licence is only valid for 30 days with the option of extension through re-approval by the supervisory body, preventing massive surveillance such as the case of 6 months of wiretapping without evaluation in East Java in 2022. Limited disclosure through annual reports containing wiretap statistics - number of licences, duration, and investigation results - without revealing the identity of the target. The Hong Kong *Independent Commission Against Corruption* (ICAC)

implemented this model since 2018, increasing public trust by 41% without compromising operational confidentiality (P. ; W. Lestari T., 2021).

Optimisation ultimately lies in the balance between state security and privacy rights. By integrating Singapore's judicial model, Germany's technology, and the United States' complaint mechanism, Indonesia can create a proportional oversight system. The key is to ensure that any wiretapping is truly a *last resort* in the fight against corruption, not a repressive instrument that erodes citizens' constitutional rights.

Conclusion

Based on the analysis of the regulation and practice of wiretapping supervision by the KPK, it can be concluded that the current supervision mechanism, especially after the revision of Law No. 19/2019, has added layers of bureaucracy that slow down the wiretapping process and potentially hamper the effectiveness of corruption eradication. The obligation to obtain permission from the Supervisory Board before conducting wiretapping is aimed at increasing accountability and protecting human rights, but on the other hand it also creates the risk of information leakage and delays in handling corruption cases that require quick action.

On the other hand, supervision by the Supervisory Board can improve the quality and accountability of wiretapping if it is conducted objectively, transparently and professionally. However, the effectiveness of supervision depends on the integrity, independence and commitment of the Supervisory Board itself. If supervision is conducted only administratively without substantive assessment, then the potential for abuse of power and violation of privacy rights can still occur, so that the goal of protecting human rights is not fully achieved.

Therefore, the optimisation of a proportional wiretapping oversight model needs to be directed towards clearer regulatory reforms, strengthening the role of independent external oversight, and utilising technology for transparency and accountability. Thus, the eradication of corruption can run effectively without compromising the protection of human rights, and public trust in the KPK as an anti-corruption institution is maintained.

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