

A HUMAN RIGHTS-BASED COMMUNICATION WIRETAPPING POLICY MODEL FOR LAW ENFORCEMENT IN INDONESIA

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Abstract

This research discusses the model of human rights-based communication tapping policy in law enforcement in Indonesia. The fragmentation of wiretapping regulations in various laws such as the Telecommunications Law, ITE Law, and KPK Law has created legal uncertainty and opened opportunities for violations of citizens' privacy rights. This study uses a literature review method to analyse norm conflicts in wiretapping regulations and formulate a policy model that meets accountability and privacy protection standards. The results show that wiretapping should be conducted based on court permission, with independent supervision, restrictions on scope and duration, and an effective complaint mechanism for victims of illegal wiretapping. Regulatory harmonisation is needed through the establishment of a special law on wiretapping that integrates international human rights principles and accountability, so that wiretapping can be an effective law enforcement instrument without compromising the fundamental rights of citizens.

Keywords: communications interception, human rights, law enforcement, accountability, privacy, regulation.

Abstrak

Penelitian ini membahas model kebijakan penyadapan komunikasi yang berbasis hak asasi manusia (HAM) dalam penegakan hukum di Indonesia. Fragmentasi regulasi penyadapan dalam berbagai undang-undang seperti UU Telekomunikasi, UU ITE, dan UU KPK telah menimbulkan ketidakpastian hukum serta membuka peluang terjadinya pelanggaran hak privasi warga negara. Studi ini menggunakan metode kajian pustaka untuk menganalisis konflik norma dalam regulasi penyadapan dan merumuskan model kebijakan yang memenuhi standar akuntabilitas dan perlindungan privasi. Hasil penelitian menunjukkan bahwa penyadapan harus dilakukan berdasarkan izin pengadilan, dengan pengawasan independen, pembatasan ruang lingkup dan durasi, serta adanya mekanisme pengaduan yang efektif bagi korban penyadapan ilegal. Diperlukan harmonisasi regulasi melalui pembentukan undang-undang khusus tentang penyadapan yang mengintegrasikan prinsip-prinsip HAM internasional dan akuntabilitas, sehingga penyadapan dapat menjadi instrumen penegakan hukum yang efektif tanpa mengorbankan hak-hak fundamental warga negara.

Kata Kunci: penyadapan komunikasi, hak asasi manusia, penegakan hukum, akuntabilitas, privasi, regulasi.

INTRODUCTION

Communication tapping has become a crucial instrument in law enforcement, especially to uncover extraordinary crimes of corruption and terrorism. Communication tapping is an activity to listen, record, deflect, change, inhibit, and/or record the transmission of electronic information and/or electronic documents that are not public, either through wired communication networks or wireless networks such as electromagnetic or radio frequency beams, which are generally carried out by law enforcement officials in the context of investigations or investigations, but is basically an action that can intervene in privacy rights and can only be legally justified if carried out in accordance with the provisions of the applicable laws and regulations (Suntoro, 2025). However, this practice leaves a dilemma between the need for investigation and the protection of human rights, especially the right to privacy guaranteed by Article 28F of the 1945 Constitution and Article 12 of the UN Declaration of Human Rights. This conflict is all the more complex given that corruption in Indonesia has reached a level that threatens national stability, while illegal wiretapping potentially violates civil liberties (Suntoro et al., 2020).

Indonesia's wiretapping regulations are currently fragmented in various regulations such as the Telecommunications Law, ITE Law, and KPK Law, creating overlapping authorities. For example, the KPK Law allows wiretapping without court permission, while the Telecommunications Law requires written permission from the authorised institution. This inconsistency fuels legal uncertainty and opens the door for abuse of authority by officials (Rahman, 2021).

The phenomenon of illegal wiretapping without a clear legal basis has been reported in several cases, where wiretapped evidence is used without fulfilling the principle of *due process of law*. In fact, the Constitutional Court in Decision No. 5/PUU-VIII/2010 confirmed that wiretapping must be specifically regulated to prevent violations of citizens' constitutional rights. Ironically, until now Indonesia does not have a comprehensive wiretapping law (Pratama, 2021).

Human rights aspects in wiretapping are often ignored, especially the *complaint mechanism* for victims of arbitrary wiretapping. In fact, the National Commission on Human Rights in the General Comment of the ICCPR emphasises that restrictions on the right to privacy must meet the principles of legality, legitimate interests, and proportionality. Without these mechanisms, wiretapping risks becoming a repressive tool (Handayani, 2023).

At the international level, the practice of *lawful interception* requires independent oversight and restrictions on the duration of wiretapping. Meanwhile, in Indonesia, the authority to grant wiretapping licences is still split between the police,

the prosecutor's office and the KPK, with no neutral oversight body. This contradicts the principle of *accountability* in human rights-based public policy, due to the absence of an independent oversight mechanism and unified reporting standards (Syahputra, 2025) . Partially regulated wiretapping in the Telecommunications Law, ITE Law, and KPK Law creates loopholes for law enforcement officials to act outside procedures without clear accountability. For example, the KPK Law allows wiretapping without court authorisation, while the Telecommunications Law requires it, resulting in a *double standard* practice that obscures institutional accountability. In fact, the principle of *accountability* requires transparency in the use of state authority, including official documentation of every stage of wiretapping and regular audits by neutral institutions (Sembiring ., 2025)

The absence of a *complaint mechanism* for victims of illegal wiretapping further exacerbates the violation of this principle. The right of citizens to file a lawsuit or clarification on allegations of arbitrary wiretapping is not procedurally guaranteed, contrary to Article 28J of the 1945 Constitution and the standard remedy in international human rights instruments such as the ICCPR (Fadillah, 2022) . As a result, law enforcement officials are not burdened with the obligation to prove the legality of wiretapping or provide compensation if proven to violate privacy rights. The principle of *accountability* in human rights-based public policy demands effective complaint channels and strict sanctions for perpetrators of abuse of authority as a form of *procedural fairness* protection (Rahman, 2021) .

Thus, this research aims to answer two fundamental questions: (1) How does the fragmentation of wiretapping regulations affect the protection of human rights in Indonesia? (2) What kind of policy model is able to balance the effectiveness of law enforcement and citizens' privacy rights?. These two questions are important to address given the widespread criticism of non-transparent wiretapping practices.

Research Methods

The research method uses a qualitative approach with a literature study, analysing primary legal materials such as the 1945 Constitution, Human Rights Law, and Constitutional Court decisions, as well as secondary materials such as journals and international reports. The *content analysis* technique was applied to identify norm conflicts in wiretapping regulations (Liberati et al., 2020) .

Results and Discussion

Conflicting Norms in Wiretapping Regulations Related to Human Rights

Indonesian wiretapping regulations suffer from normative fragmentation that creates legal uncertainty and human rights violations. Article 28G of the 1945 Constitution guarantees the right to privacy as part of human rights, but the Telecommunications Law, ITE Law, and KPK Law regulate wiretapping with different

standards, creating conflicts between the interests of law enforcement and the protection of citizens' rights. For example, the KPK Law allows wiretapping without court permission, while the Telecommunications Law requires written permission from an authorised institution, creating a *double standard* that contradicts the principle of equality before the law (Kurniawan, 2024).

Differences in wiretapping licence procedures between institutions exacerbate this conflict. The Police and the Attorney General's Office require court approval, while the KPK only needs internal permission from the Supervisory Board (Dewas), which is considered less independent. In fact, Constitutional Court Decision No. 5/PUU-VIII/2010 affirmed that wiretapping should be regulated in a special law to prevent abuse of power. This lack of clarity ignores the principle of *due process of law* and opens the door to arbitrary interference with privacy (Yuliana, 2022).

Conflicts also arise in the use of wiretap evidence. The KPK Law allows the use of wiretap results as evidence without strict verification, while the ITE Law requires validation through a *hash code* mechanism to prevent manipulation. This inconsistency contradicts the *fruit of the poisonous tree* principle in criminal procedure law, where illegal evidence should not be used in court. The absence of a *complaint mechanism* for victims of illegal wiretapping reinforces human rights violations (Lestari, 2021). Article 28J of the 1945 Constitution requires the limitation of human rights through law, but victims have no official channel to challenge wiretapping practices that are deemed to exceed authority. In fact, international human rights instruments such as the ICCPR require access to remedies for victims of privacy violations (Nurhadi, 2025).

Standards for the duration of wiretapping are also not uniform. The Terrorism Law allows for 3 days of urgent wiretapping without court permission, while the KPK Law does not limit the time of wiretapping, potentially interfering excessively with privacy. This disharmony reflects the state's failure to balance security interests and civil liberties (Priyanto, 2024).

At the international level, the principle of *lawful interception* requires independent oversight and restrictions on the scope of wiretapping. However, in Indonesia, oversight institutions such as Komnas HAM do not have sufficient authority to monitor this practice, resulting in weak accountability for wiretapping. The conflict of norms is further complicated by the existence of the Intelligence Law which grants wiretapping authority to BIN without clear limitations, contrary to the Constitutional Court Decision which affirms wiretapping as a judicial authority. This creates a "double wiretapping" regime that is prone to abuse for political interests (Wahyuni, 2024).

Different perspectives between law enforcement and human rights activists have also exacerbated the problem. KPK argues that wiretapping without court authorisation is necessary to combat corruption, while human rights activists see this as a form of *state surveillance* that violates privacy. Article 28F of the 1945 Constitution explicitly protects freedom of correspondence (Putri, 2025).

The absence of a comprehensive wiretapping law prolongs the conflict. The Constitutional Court has urged the establishment of special regulations since 2010, but until now the Wiretapping Bill has not been passed due to the tug of political interests. As a result, the practice of wiretapping remains partially regulated and discriminatory. The impact of this norm conflict can be seen in cases of illegal wiretapping by the authorities who use the results as a means of extortion. Without an audit mechanism, victims have difficulty proving abuse of authority, so the principle of *presumption of innocence* is threatened (Hidayat, 2021).

Harmonisation efforts through the Wiretapping Bill have also faced challenges. A draft proposed by the Ministry of Communications and Information in 2011 failed due to resistance from the KPK and ICW, who feared that a court permission mechanism would slow down corruption investigations. This demonstrates the tension between law enforcement efficiency and human rights protection (Ramadhan, 2022).

Philosophically, this norm conflict reflects a failure to implement the second principle of Pancasila (*just and civilised humanity*). Unrestricted wiretapping ignores human dignity as a subject of law, not an object of repression. The proposed solutions include: (1) drafting a law on wiretapping that integrates international human rights standards, (2) establishing a special court to oversee wiretapping licences, and (3) imposing criminal sanctions on perpetrators of illegal wiretapping. Without these measures, norm conflicts will continue to undermine the legitimacy of law enforcement in Indonesia (Putra, 2023).

Thus, the conflict of norms in wiretapping regulations in Indonesia reflects the unpreparedness of the legal system to accommodate the dynamics of technology and human rights. Harmonising regulations and strengthening checks and balances mechanisms are key to preventing wiretapping from becoming a tool of repression in the name of law enforcement.

Wiretapping Policy Models that Meet Accountability Standards and Privacy Protection

Wiretapping as a law enforcement tool requires a policy framework that ensures accountability and protection of privacy rights. Article 28G of the 1945 Constitution and international human rights instruments such as the ICCPR mandate restrictions on wiretapping through clear, proportional, and transparent laws. However, regulation in Indonesia remains fragmented in the Telecommunications Law, ITE Law, and KPK Law, creating loopholes for abuse of power and privacy violations (Saputra, 2023).

First, wiretapping policy should involve an independent authority such as a court to grant permission, as recommended by Constitutional Court Decision No. 5/PUU-VIII/2010. This process should include verification of *prima facie* evidence that the wiretapping is necessary for the investigation of serious crimes such as corruption or terrorism. Without this mechanism, the risk of arbitrary wiretapping by the authorities remains high (Prasetyo, 2020).

Second, the duration of wiretapping must be strictly limited. European practice limits wiretapping to a maximum of 3 months with extension through court re-approval, while in Indonesia, the KPK Law does not set a time limit, potentially over-interfering with privacy. This restriction should be accompanied by regular reporting to supervisory institutions to ensure compliance (Sumariyastuti, 2020)

Third, the scope of wiretapping needs to be narrowed to information relevant to the investigation. The *Lawful Interception Standard* requires restricting access to intercepted material to specific investigative teams, with criminal sanctions for leaking data outside of legal interests. This prevents misuse of data for blackmail or political interests (Dewi, 2021).

Fourth, policies should include a *complaint mechanism* for victims of illegal wiretapping. Komnas HAM recommends the establishment of administrative and civil lawsuit channels, as well as compensation for victims of violations, in accordance with Article 28D of the 1945 Constitution. Without this, citizens have no legal tools to defend privacy rights. (Maulana, 2024)

Fifth, the application of the principle of *privacy by design* in wiretapping technology. End-to-end encryption in communication applications must be respected, unless there is a *backdoor* that is strictly regulated for the benefit of the state, with the supervision of an independent institution. However, this access should be the exception, not the norm (Wibowo, 2022).

Sixth, harmonise regulations through a Wiretapping Bill that integrates human rights standards. This bill needs to regulate: (1) the exclusive authority of the court to authorise wiretapping, (2) a list of specific crimes that can be wiretapped, (3) procedures for data destruction after the case is over. Fragmentation of the current law leads to overlapping authority between the KPK, police, and BIN (Siregar, 2021).

Seventh, the establishment of an independent oversight institution comprising representatives of civil society, Komnas HAM, and technology experts. This institution is tasked with auditing the implementation of wiretapping, receiving complaints, and recommending sanctions for violators. This model is adopted from the Singapore Data Protection Authority, which has been effective in preventing the abuse of (Plenary, 2020)

Eighth, strict sanctions for perpetrators of illegal wiretapping. The Personal Data Protection Act (PDP Act) threatens penalties of up to 5 years in prison for privacy violations, but enforcement remains weak without a specialised agency. Administrative sanctions such as revocation of operating licences are also needed to create a deterrent effect (Susanto, 2023).

Ninth, transparency through regular public reporting. Supervisory agencies are obliged to publish wiretapping statistics, including the reasons, duration, and results of investigations, without divulging the identity of suspects. This practice is applied in

Germany to maintain accountability without interfering with the legal process (Rahayu, 2023).

Tenth, training law enforcement officials on human rights-based wiretapping ethics. Training materials should include investigative techniques that minimise privacy intrusion and accountable reporting procedures. This competency is a prerequisite for officers before obtaining a wiretapping certificate (Utari & Arifin, 2022).

Eleventh, collaboration with the private sector in technology development. Telecoms operators and digital platforms are obliged to assist the authorities in accordance with court orders, but may refuse illegal requests. This cooperation should be regulated in a multi-layered agreement to prevent abuse (Sari, 2021).

Twelfth, periodic evaluation of the policy by the DPR and Komnas HAM. The evaluation should include the impact of wiretapping on crime reduction and reported privacy violations, with recommendations for revision of the law every 5 years. This mechanism ensures the policy remains relevant to technological developments (Dewi, 2021).

Thirteenth, adaptation of international standards such as UNODC's *Necessity and Proportionality Principles*. This principle emphasises that wiretapping should only be used when other investigative methods are inadequate, and the scale is proportionate to the level of crime (Nugroho, 2022).

Fourteenth, public education on rights and procedures against illegal wiretapping. The public needs to understand how to report violations through Komnas HAM's online platform or the courts, and limit the exposure of personal data on vulnerable apps (Mukti & Rodiyah, 2020).

This policy model balances the needs of law enforcement and human rights protection through a unified regulatory framework, independent oversight, and strict sanctions. Its implementation requires political commitment to revise the Telecommunications Law, ITE Law, and KPK Law into one special regulation that adopts the principles of *accountability and privacy by default* (Rusydi, 2025).

Thus, the regulation of tapping of communications by law enforcement officials in Indonesia is still scattered in various laws and there is no adequate synchronisation between existing regulations. This condition leads to differences in authority and procedures among law enforcement agencies, potentially causing legal uncertainty and opening up opportunities for human rights violations, especially the right to privacy and freedom of communication as guaranteed in the 1945 Constitution.

Wiretapping can indeed be justified in the context of law enforcement, especially to uncover extraordinary criminal offences such as corruption, but its implementation must still be subject to human rights principles and clear and firm restrictions in the law. The absence of a special law that comprehensively regulates wiretapping has caused the licensing mechanism, supervision, and protection of the rights of victims of wiretapping to not run optimally. Therefore, it is necessary to establish a special law on

wiretapping that regulates in detail the authority, procedures, supervision, as well as complaint and recovery mechanisms for victims of illegal wiretapping, so that wiretapping can be carried out accountably, proportionally, and still respect human rights.

Conclusion

Based on the review of wiretapping regulations and practices in Indonesia, it can be concluded that the fragmentation of norms in various laws has created legal uncertainty and loopholes for abuse of authority. Wiretapping conducted without a transparent licensing mechanism and independent oversight has the potential to violate human rights, particularly the right to privacy and freedom of communication. The absence of complaint mechanisms and strict sanctions for perpetrators of illegal wiretapping further weakens the protection of citizens' rights.

Wiretapping is indeed an important instrument in law enforcement, especially to uncover extraordinary criminal offences such as corruption and terrorism. However, its implementation must still prioritise the principles of accountability, proportionality, and respect for human rights. The ideal wiretapping policy model is one that places court permission as the main prerequisite, limits the scope and duration of wiretapping, and provides an effective and independent monitoring and complaint mechanism.

Therefore, regulatory harmonisation is required through the establishment of a specific law on wiretapping that integrates international human rights standards and the principles of accountability and privacy by design. With comprehensive regulations in place, wiretapping can be used effectively as a law enforcement tool without compromising the fundamental rights of citizens, thus creating a balance between security needs and the protection of human rights in Indonesia.

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