

Analysis of The Mechanism Process From The Tapping Action To Find Evidence In Crime

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Abstract

The purpose of this paper is to find out related to the analysis of the mechanism process from the act of tapping to find evidence in the crime itself. Using normative juridical research with a statute approach which is carried out by reviewing all laws and regulations related to legal issues regarding wiretapping, especially Article 31 paragraph (1) and (2) of Law Number 19 of 2016 concerning Information and Electronic Transactions and how they are enforced in Indonesia and a comparative approach to compare the law on wiretapping carried out by investigators in countries that regulate laws against wiretapping with the Indonesian state, so that the results of the wiretapping mechanism itself can be obtained. The analytical technique used is in the form of juridical normative with comparative approach techniques by analyzing problems related to how the comparison of wiretapping conducted by investigators in Indonesia with countries that regulate legal issues regarding wiretapping, along with the advantages and disadvantages of each accompanied by grammatical interpretation. In this case, wiretapping is included in an action whose purpose is to find evidence related to the trial, although in Indonesia it is known that there is no more specific regulation, but the wiretapping carried out must then be adjusted to the norms and human rights itself so that the wiretapping is not carried out later, violate the privacy rights of everyone including the victims.

Keywords: Interception, Analysis, Mechanism

Introduction

In the field of telecommunications, information and computers, the development of science and technology is very rapid, and these fields have produced a kind of application of life that is always modern. With the existence of communication and information technology, people's behavior and behavior have changed on a global scale, so the development of information technology has also made the world unlimited, and has led to relatively fast social, cultural, economic and law enforcement models (major changes). The development of information technology has now become a designation like double-edged sword, because it not only contributes to progress, improvement of welfare and human civilization but is also an illegitimate means (Ministry of Communication and Information of the Republic of Indonesia, 2007).

The development of information technology and telecommunications today has brought benefits to people around the world by providing convenient ways of interaction without having to meet face to face. The harsh reality is that the development of information and telecommunications technology is often misused by the wider community, including in Indonesia, who commit or take actions that may violate the law. Therefore, the pressure on the law itself to enter the field of digital technology will increase. This includes legal policies regarding wiretapping, which will then be used as evidence in investigations to deal with the reality of social developments.

In the big Indonesian dictionary, wiretapping is a process, method and act to listen to information (secret talks) of other people intentionally without the person's knowledge (Rachmad, A., 2016). In addition, actions against wiretapping are also regulated by Law no. 36 of 1999 concerning Telecommunications in article 40, " everyone is prohibited from conducting wiretapping activities on information that is channeled through telecommunications networks in any form ". The prohibition referred to in this article is installing equipment or adding telecommunications networks to obtain information illegally and against the law.

While wiretapping which is stated in Law no. 19 of 2016 Regarding ITE, wiretapping is included in a term called Interception. Interception or other words of wiretapping according to the ITE Law are activities such as recording, listening, changing, deflecting, inhibiting, and/or recording a transmission of Electronic Documents and Electronic Information that is not public or private, whether in use using wired or wireless networks. communication cables, such as electromagnetic or radio frequency beams.

However, the elements of wiretapping must be fulfilled, as can be seen in Article 31 paragraph (1), (2) of the ITE Law, which reads: (1) "Everyone intentionally and without rights or against the law conducts interception or wiretapping on Electronic Information and/or Electronic Documents in a certain Computer and/or Electronic System belonging to another person". (2) " Every person intentionally and without rights or against the law intercepts the transmission of Electronic Information and/or Electronic Documents that are not public from, to,

and within a certain Computer and/or Electronic System belonging to another person, whether does not cause any changes or causes changes, disappearances, and/or termination of Electronic Information and/or Electronic Documents that are being transmitted”.

From the website of the Institute of Criminal Justice Reform or what can be called ICJR, the wiretapping behavior explains that Article 31 "UU ITE" stipulates that: (1) First, law enforcement officers have the right to conduct wiretapping for law enforcement, (2) Wiretapping by law enforcement officers must be based on legal requirements, and (3) The authority to carry out wiretapping and wiretapping law enforcement requests must be determined in accordance with the Act.

Judging from the statement regarding the prohibition of wiretapping or interception in Article 31 of the ITE Law, this shows that wiretapping is not allowed unless the party has the right to enforce the law. If the wiretapping is carried out in a way that violates the law, the results of the wiretapping cannot be used as evidence in the trial. Judges of the Constitutional Court through the Constitutional Court Decision No. 5/PUU-VIII/2010 cancel the contents of Article 31 paragraph (4) of the ITE Law which argues that there is no fixed regulation regarding the implementation of wiretapping, so there may be deviations in its implementation. The Constitutional Court is of the opinion that wiretapping is a form of violation of the individual's right to privacy which is very much against the 1945 Constitution. In the Constitutional Court's decision, nine constitutional judges agreed that any wiretapping must be strictly monitored by law. The Court said " The court is of the opinion that the wiretapping procedure must still be regulated by law. So far, the provisions regarding wiretapping are still very much dependent on the policies of each agency".

Quoting from the decision of the Constitutional Court, there is a reason that it needs to be regulated in law because the act of wiretapping and recording of conversations is a limitation on human rights, where such restrictions can only be carried out by law, as has been determined by article 28J paragraph (2) The 1945 Constitution. This law must be formulated further, among others, it must be authorized to issue wiretapping and recording orders after obtaining sufficient preliminary evidence. This means that wiretapping and recording are for the purpose of perfecting evidence, or rather for wiretapping and recording. Sufficient preliminary evidence can already be found. The Constitutional Court recognizes that wiretapping is one of the institutions of inquiry and investigation, and has assisted in many legal procedures. This makes it easier for law enforcement officers to detect criminal acts.

What about wiretapping in various countries? In almost all countries/regions, organizations that have telephone tapping rights must have a license from an organization outside the organization. What does it take to get a licensed agent? According to the political policies of various countries, several courts, ministers of state or independent institutions apply to the courts.

Similar to the United States, wiretapping must be ordered by a court before it can be enforced. This is done in Chapter III "Omnibus Crime and Safe Street Act 1968" in Title 18 of 18 USC 3121-3127, "Foreign Intelligence Surveillance Act 1978", "The Pen Registration and Trap and Tracking Equipment" Regulation. Wiretapping in Chapter 3 of the Omnibus Crime and Safe Street Act of 1968. However, wiretapping was legally recognized in the United States after the terror events on November 9 where it was used to prevent the same event from happening again. Therefore, wiretapping that is legally valid (lawful interception) is given full authority to apply (Makarim, E., 2010).

Wiretapping in the UK also requires permission from an outside agency that has the right to eavesdrop. That is, seek permission from the Secretary of State or the Secretary of Home Affairs, the organization responsible for UK law and order. This wiretapping is in the interest of national security, and the aim is to prevent serious crimes, and the national economy or to make the provisions of the relevant international legal aid treaties effective.

In France, this is strictly regulated and requires court approval. However, these wiretappings are monitored by an independent committee. Members of this committee are appointed by the President of France at the suggestion of the Vice President for a term of 6 years. In the Netherlands, investigators must obtain a warrant issued by a judge. For the purposes of intelligence, national security, and national defense, wiretapping is intended for serious crimes, such as those punishable by more than four years in prison (Reda, Manthovani., 2015).

The government, through the communications and information department, is currently in the middle of preparing to draft a government regulation (RPP) on wiretapping law enforcement procedures (referred to as the Interception Mechanism Program RPP). The government believes the design is mandatory from Law Number 11 of 2008 Electronic Information and Transactions subject to wiretapping authorities because now there is something suspicious between several agencies wiretapping each other.

So, seeing from this background that the act of wiretapping is very necessary in order to find evidence, but there are still obstacles in the regulations where there is still no regulation on the procedures that must be carried out or the limitations that must be carried out by investigators in carrying out wiretapping actions. The procedure for wiretapping in order to find evidence needs to be formulated in a special law so that there is no conflict of law and interest and to look again from the side of human rights in the implementation of wiretapping. So here the author in this journal will evaluate or analyze the articles that regulate the procedures and/or process of wiretapping actions based on existing laws or formulate the wiretapping action because of the ambiguity of norms, with the title of "Analysis of the Mechanism Process From the Tapping Action to Find Evidence In Crime".

Method

The type of research used in this paper is normative juridical research which means that this research will solve legal problems based on an in-depth study of library materials and legal documents related to the material studied (Amiruddin & Askin, Z., 2004). The author uses this type of research because this type of normative juridical research is appropriate to examine laws and regulations that are related to the issue of wiretapping and also as a comparison related to how the laws and regulations that exist in Indonesia are compared and in countries that regulate the law about wiretapping.

This research is normative juridical research that uses 2 (two) approaches, including the statute approach, carried out by reviewing all laws and regulations related to legal issues regarding wiretapping, especially article 31 paragraph (1) and (2) Law number 19 of 2016 concerning Electronic Information and Transactions and how it is enforced in Indonesia and the comparative approach, in this case, is to compare the law on wiretapping carried out by investigators in countries that regulate the law against wiretapping with Indonesian country. The analytical technique that will be used in this study is a qualitative analysis technique, namely by analyzing problems related to how the comparison of wiretapping conducted by investigators in Indonesia with countries that regulate legal issues regarding wiretapping, along with the advantages and disadvantages of each. Where in it then uses a grammatical interpretation, which is carried out on the articles contained in various laws and regulations related to wiretapping carried out by investigators in Indonesia and in countries that regulate wiretapping and comparative interpretation, which provides an explanation of a statutory provision. invitation based on legal comparisons and seek clarity on the meaning of the legislation

Discussion

Laws and Regulations Against Wiretapping

Wiretapping is an activity to obtain information illegally. Because invalid information is obtained without the knowledge of the sender or recipient of the message. Wiretapping occurs a lot in telephone telecommunications media. However, it does not cover doing it in other media, such as Telegram, internet and fax. Another definition of legal wiretapping, legal interception of wiretapping puts a position where wiretapping in the telecommunications network operator is to fulfill certain provisions that are considered valid in this legal clause, which country's law regulates relevant so that there may be rules and standards that differ from country to country. other.

If we look at the existence of lawful interception rules in Indonesia, the Indonesian state has issued a regulation from the Minister of Communication and Information Number 11/PER/M.KOMINFO/02/2006 which explains the technical information on wiretapping which contains internal guidelines for legal wiretapping. From the explanation of the definition according to this regulation, wiretapping is listening, taking notes or recording conversations by installing law

enforcement officers with additional devices or devices on the telecom network that people do not understand. Who is speaking or communicating (Fitria, RA, 2017). Sofyan Djalil explained that telecommunications and law enforcement must be related, where there are two interests related to the regulation of wiretapping mechanisms, namely first, in the context of law enforcement, investigations, terrorist crimes, etc., second, on the other hand there must be regulations governing how to protect human rights.

Confusion about wiretapping regulations in Indonesia is due to the large number of legal provisions that provide national institutions to take wiretapping actions, which are often limited by other provisions and regulations (Yuvens, DA, et al, 2017). In the absence of a single rule of procedural law and/or wiretapping procedures in Indonesia, the Indonesian people's privacy is threatened, including other people in a country governed by the laws of a modern democratic world. In this situation, it may be because the state apparatus can easily use various methods of intervening in the privacy of its citizens.

In Indonesia, where the law is still uncertain regarding wiretapping, it can be seen from the number of government agencies or authorities to conduct wiretapping and grant permits for wiretapping. We can see from those who have the power to carry out wiretapping actions from government authorities that have regulations in Indonesia, for example, the Psychotropic Law has a permit for wiretapping and recording with the permission of the Chief of Police or the National Police Chief. The Anti-Drugs Law (UU No. 35 of 2009) allows the National Narcotics Agency (BNN) to conduct wiretapping with permission from the local District Court, but even in urgent circumstances, BNN can take wiretapping actions without permission from the district court.

There are also wiretapping regulations that exist in the State Intelligence Act in article 32, but state intelligence has criteria to allow its agencies to conduct wiretapping. First, these activities can threaten national or state interests or security which includes ideology, politics, economy, society, culture, defense and security, and the life sector of the community itself. Also included are the links between food, energy, natural resources, and the environment. Second, these activities are in the form of terrorism, separatism, espionage, and sabotage that can threaten national security, sovereignty and safety, including those currently undergoing legal proceedings. The period of wiretapping carried out by state intelligence is about 6 months and can be extended if needed.

Supervision and protection of the right to personal privacy as regulated in the 1945 Constitution is not an absolute human right, nor can it be limited, as long as the right to privacy is limited by the laws governing it, the right to privacy can still be reduced or limited. As previously regulated in Article 28J (2) of the 1945 Constitution, it means that everyone is obliged to comply with the limits set by law, with the sole aim of guaranteeing respect for and recognition of the freedoms and rights of the people. Second, consider religious values, public order, morality and security in a democratic society to fulfill the requirements of justice.

Ifdhal Kasim (Chairman of the National Human Rights Commission 2007-2012) believes that the limitation of human rights through the wiretapping law must have conditions such as: a) There is a clear official authorization to issue wiretapping permits, b) There must be a clear timeline for wiretapping, c) Limitations in processing wiretapping materials and d) Restrictions on personnel who can access wiretapping results (Kristan, & Gunawan, Y., 2013).

In terms of the legality of Indonesian supervision, regulations in Indonesia usually only supervise the authority given to investigators, regardless of whether the investigator is the Corruption Eradication Commission, the Indonesian National Police or the Attorney General's Office for wiretapping or interception, but there are no rules in the legislation. invitation explaining why. Procedures and methods of implementation prescribed by law. Paying attention to the facts or information obtained can be deemed necessary and authoritative. However, regulations at the legal level have not regulated the procedures (Manthovani, R., 2015).

As far as the authority to conduct wiretapping is concerned, the law must explain at least two important things. These two things are the authority to conduct wiretapping and the authority to give approval for the implementation of wiretapping. Because the first provision is related to the authority to conduct wiretapping, in principle the law governing wiretapping has given authority to state agencies and other law enforcement agencies to conduct wiretapping (Afandi, F., 2016). The agencies in question include the Police, Attorney General's Office, KPK, Intelligence, and BNN. In general, in some cases, the law uses the term investigator based on the scope of the law governing the conduct of wiretapping. On the other hand, there are also main principles of wiretapping which emphasize aspects of strict examination, balance and separation of responsibilities (Suntoro, A., 2020).

The following is the basis for determining strong reasons for wiretapping authorization, namely: First, wiretapping can only be carried out by certain agencies or agencies that have strategic functions in investigations or as law enforcers. In the process of carrying out wiretapping, it is limited to preventing and detecting other crimes that are included in the category of extraordinary crimes or serious crimes. Second, wiretapping can only be carried out by legal institutions or institutions designated by law, if other investigative methods are used and are deemed ineffective in investigating and preventing other crimes, these institutions will not be eligible. Third, there is no more effective way to conduct an investigation to obtain the necessary information than wiretapping. Fourth, there must be a very strong and credible reason, in this case, the investigator must conduct wiretapping to obtain new evidence, and at the same time, the perpetrators of the crime targeting the wiretapping must be punished (Falahk, MF, 2010).

In addition, the second provision is a legal entity or institution that allows investigators to be given the authority, permission, or approval to conduct wiretapping. In some wiretapping behavior regulated by Legislation, some indicate that approval and decision of the district court for wiretapping is required, but not

all terms of interpretation of wiretapping require permission from the head of the court.

The conduct of wiretapping cannot be granted to all legal entities with their own interests and, if permitted by law, without certain institutions granting permits in any form in accordance with the provisions or approvals for granting permits. If it is deemed that the court did not authorize wiretapping, the law has the right to provide other solutions to the problem.

The granting of permits is indeed very important because some people say wiretapping is a form of human rights violation, but it will be deviated by law. Since there is a legal entity that can provide regulation or approval for wiretapping, fraud can be minimized. In this case, the abuse of power and actions in the wiretapping process is free of charge. In addition, legal entities that authorize several state institutions and investigators to conduct wiretapping can also act as supervisors to oversee the implementation of wiretapping by state institutions authorized to conduct wiretapping will automatically affect the method of wiretapping. The application of wiretapping using telephone media is certainly very different from using the internet by wiretapping. Sufficiently detailed and comprehensive provisions regarding the method of using various existing media are sufficient to ensure legal certainty of legal wiretapping.

Simply put, the tapping mechanism can be done in various ways, such as: a) Bugging, by installing a transmitter in the monitoring room/target room to monitor and record all the beliefs about when the object is being tapped, b) Bird Dog, the process of tapping is done by installing the transmitter on the car./person/object whose whereabouts can be tracked., c) Internet Interception, which is the realization of wiretapping by hacking e-mails that are the target of wiretapping, d) CCTV, in the form of cameras that record an incident in certain places and also e-mail.) Direction Finder is a wiretapping process by tracking the whereabouts of someone who is being tapped.

International associations or organizations engaged in telecommunications are very concerned about issues related to wiretapping. Therefore, standards for the application of wiretapping have been prepared for law enforcement officers and companies engaged in information technology and telecommunications, these standards can be used as a reference for the application of wiretapping methods at the national and domestic levels. The agency or institution that is responsible for making the standardization is the European Standards Telecommunication Institute, also known as ETSI.

The requirements for wiretapping must be clearly defined to ensure legal certainty, justice and prevent human rights violations. As we have seen, wiretapping is a complete violation of a person's right and privacy to communicate and act freely. The authority granted by the institution to conduct wiretapping is only within the scope permitted by law, and is considered important in efforts to find evidence in law enforcement and/or prevention of specific crimes.

Several things that can be used as conditions before wiretapping are related to certain types of crimes that are classified as serious or special. For this act, there

is sufficient evidence of the beginning of wiretapping and can be obtained from certain agencies. Having a permit and the agency is regulated by law, and the time of wiretapping is also regulated. Then it must also regulate conditions that allow wiretapping without the consent of a legal entity appointed by law. In this case, the investigator or the competent state agency can prove that the wiretapping must be carried out without prior approval.

The use of wiretapping results must be clearly regulated by law because wiretapping results are related to a person's personal data, not public consumption. The use of wiretapping results must be in accordance with the cause of the criminal act and must also meet the requirements of the agency authorized to conduct wiretapping. In addition, the law must also pay attention to the use of wiretapping results, and storage of wiretapped data, so that data does not leak and can damage the dignity of others so that other crimes will not occur.

In addition to all the content that has been described, we also need to pay attention to the mechanism of the tapped recording after it is used. In general, criminal cases, whether it needs to be treated like other evidence, destroyed or stored for a certain period of time, and whether it still needs to be regulated in law, because it is related to a person's privacy regarding human rights.

This discussion is related to wiretapping which of course must involve all parties who provide information and telecommunications services. If information and telecommunications services companies must have the ability to intercept the devices or media services they provide, the law may require this. This is very important given the rapid development of technology and expectations for the future.

Investigators or state agencies with legally obtained wiretapping authorities must cooperate with information and telecommunications service providers. If the service provider company cannot use its information and telecommunications technology, then criminals will be dangerous if they take advantage of this vulnerability, because the information technology and telecommunications service provider cannot conduct wiretapping which is considered effective for early detection or to prevent certain crimes.

Conclusion

Because the act of wiretapping is an act which, if used with the intent to commit a crime, it could be a category of crime that is special or special in which it is necessary to make a new law regarding this explanation which, if formulated, will assist law enforcement authorities in carrying out wiretapping actions in finding evidence. evidence that can be used in court. Because at this time there is still no law that formulates the subject of the implementation of wiretapping which is especially carried out by law enforcers starting from clear procedures or mechanisms. If this is allowed, there will be a violation of human rights which in fact should not be disturbed at all because every living individual has the right to have human rights and must not be violated at all. The law, which will be

formulated regarding the wiretapping action or mechanism, is a specialty which may later violate human rights in the wiretapping action that is in accordance with the Supreme Court's decision regarding wiretapping actions carried out by law enforcers or investigators to look for evidence that is carried out legally according to the law. the Act. And according to the 1945 Constitution article 28J paragraph (2), it is formulated that the right to privacy of humans can be violated if the legal instrument that violates it is in the form of a law Constitution.***

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