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The Authority of the Attorney General's Office of the Republic of Indonesia in Wiretapping Corruption Cases

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ABSTRACT: Wiretapping is an intrusive law enforcement instrument that has an impact on the restriction of citizens' constitutional rights, particularly the right to privacy. In the context of combating corruption as an extraordinary crime, the Attorney General's Office of the Republic of Indonesia is required to have effective and responsive investigative powers against increasingly sophisticated and covert modes of crime. However, the wiretapping powers stipulated in Article 30C letter i of LawLaw Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office are still general in nature and do not meet constitutional standards as affirmed by the Constitutional Court, thus raising issues of legal certainty, accountability, and potential abuse of authority. This study aims to analyse the legal implications of the implementation of wiretapping powers by the Attorney General's Office in handling corruption cases and to formulate an ideal regulatory model in line with the principles of the rule of law, protection of human rights, and best practices in ASEAN countries. This study uses a legal-normative method with a legislative, conceptual, and comparative approach. The results of the study show that the fragmentation of wiretapping regulations and the absence of a clear judicial authorisation and oversight mechanism have the potential to lead to violations of constitutional rights and undermine the legitimacy of law enforcement. Therefore, it is necessary to reconstruct the regulation of the Attorney General's Office's wiretapping authority through the formation of a Special Wiretapping Law (lex specialis) that contains limitations on authority, judicial control mechanisms, operational standards, and internal and external accountability systems to ensure that the effectiveness of corruption eradication remains in line with the principles of justice, legal certainty, and respect for human rights.

KEYWORDS: Attorney General's Office, Wiretapping, Corruption Crimes, Legal Certainty, Human Rights.

I. INTRODUCTION

Corruption is one of the most destructive forms of crime to the order of national and state life. Juridically, criminal acts of corruption include unlawful acts that enrich oneself or others unlawfully to the detriment of state finances or the state economy. Based on the 2003 *United Nations Convention against Corruption* (UNCAC), corruption includes not only bribery, but also embezzlement, *trading in* influence, and obstruction of the legal process. Thus, corruption is not only understood as a common violation of the law, but as a phenomenon of structured crime that attacks the core of state administration.[1]

The impact of corruption is systemic and multidimensional. In the public sector, corruption results in budget leaks, inefficient public services, and a loss of public trust in state institutions. On a global scale, *Transparency International* (2023) notes that the economic losses due to corruption worldwide reach more than USD 3.6 trillion per year, both directly and indirectly.[2] In Indonesia, the Supreme Audit Agency (BPK) recorded that the potential state losses due to corruption reached more than IDR 42.07 trillion throughout 2022.[3] This data shows that corruption is not only a violation of the law, but also a form of denial of the principles of social justice and public interest.

Corruption also erodes the political, economic and social structures of society. Politically, corruption undermines the quality of democracy, weakens the checks and balances between state institutions, and fosters a culture of impunity. Economically, corruption hinders investment, reduces national competitiveness, and creates market distortions and unequal access to resources. Socially, corruption triggers inequality, distrust among citizens, and increased public apathy towards the legal system and government.[4]

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[1] United Nations, *United Nations Convention against Corruption*, New York: UNODC, 2003, pp. 9–11.

[2] Transparency International, *Global Corruption Report 2023*, Berlin: TI Secretariat, 2023, p. 14.

[3] Indonesian Audit Board, *Summary of Audit Results for the Second Half of 2022*, Jakarta: BPK RI, 2023, p. 9.

[4] Paolo Mauro, "Corruption and growth." *The quarterly journal of economics*, Vol. 110, No. 3 (1995), pp. 681-712.

Considering its scope and complexity, corruption is categorised as an extraordinary crime. Romli Atmasasmita, among others, emphasises that corruption is extraordinary because of its systemic impact and its targeting of the "heart" of the government system.[5] Consequently, tackling corruption requires *extraordinary* measures, both in terms of law enforcement, evidence, and sanctions. Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on Eradicating Corruption Crimes regulates the forms of corruption crimes and expands the scope of perpetrators to include both individuals and corporations. [6]

However, the eradication of corruption in Indonesia still faces various obstacles. Law enforcement agencies such as the Corruption Eradication Commission (KPK), the Attorney General's Office, and the Police face difficulties in proving cases, especially those involving systematic, covert corruption that utilises modern technology. Contemporary corruption often involves cross-border flows of funds, the use *of offshore accounts*, and transactions through *shell companies* that are difficult to trace.[7] On the other hand, strong networks of perpetrators in the bureaucracy and the private sector, as well as the involvement *of powerful actors* with political and economic clout, often hinder the legal process and threaten the independence of law enforcement agencies.

Another challenge lies in policy disparities and weak inter-agency coordination. Not to mention, a number of revisions to laws and regulations, such as the revision of Law No. 30 of 2002 on the Corruption Eradication Commission to Law No. 19 of 2019, are considered by some to weaken the function and independence of the KPK as the front line in the fight against corruption.[8] This reflects that the fight against corruption is not only legal and formal in nature, but also involves political, institutional and broad public participation aspects.

Therefore, the approach to eradicating corruption must be comprehensive, ranging from strengthening the law, bureaucratic transparency, increasing public oversight, to institutional reform. Only with an integrated and comprehensive strategy can the state respond effectively to the threat of corruption and restore public trust in the law and government. Due to the nature of corruption as *an extraordinary crime* that is systemic, organised, and often involves actors of power at the strategic level, it is only fitting that institutions with authority in handling corruption cases are also given extraordinary powers. These extraordinary powers are not intended to violate the principle *of due process of law*, but rather to provide adequate legal space for law enforcement agencies to take proactive, responsive and swift action in uncovering corruption crimes, which are often carried out covertly, using information technology and exploiting regulatory loopholes. Therefore, the strengthening of special powers, including powers in certain investigation techniques such as wiretapping, must be placed within a clear and accountable legal framework, so that it is not only effective in eradicating corruption, but also remains within the boundaries of the constitution and the principles of the rule of law.

Authority, commonly referred to as wewenang in Indonesian, is equivalent to "*authority*" in English and "*bevoegdheid*" in Dutch. According to Black's Law Dictionary, it is defined as "*Legal Power; a right to command or to act; the right and power of public officers to require obedience to their lawful orders within the scope of their public duties*".[9] Authority or power is legitimate power, the right to command or act on the rights or powers that refer to public officials to enforce regulations as part of their public duties. In administrative law, there are two ways to obtain governmental authority or power, namely grant and delegation, and sometimes there is also what is called a mandate, which is placed separately to obtain power.[10] Authority in power requires a foundation rooted in legitimate authority. When evaluating the origin or acquisition of authority, it is important to consider whether that authority can be classified as legitimate.

In the Indonesian legal system, the position and authority of the Attorney General's Office of the Republic of Indonesia are primarily regulated in Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia as amended by Law No. 11 of 2021 (Attorney General's Office Law). This regulation governs the duties, functions, structure, and mechanisms of the Attorney General's Office, including the procedures for pre-prosecution, certain investigations, follow-up prosecutions, the execution of court decisions, the supervision of parole, and other legal actions related to the handling of criminal cases.[11] Article 1 paragraph (1) of the Attorney General's Office Law states that the Attorney General's Office is a government institution that exercises state power in the field of prosecution and other authorities based on the law. This provision is clarified in Article 1 paragraph (2)

[5] Romli Atmasasmita, *National Strategy for Corruption Eradication in Indonesia*, Jakarta: Prenada Media, 2012, p. 85.

[6] Articles 2 and 3, Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption in conjunction with Law Number 20 of 2001.

[7] Todung Mulya Lubis, *In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order 1966–1990*, Jakarta: PT Gramedia Pustaka Utama, 2015, pp. 237–240.

[8] Bivitri Susanti, "Anti-Corruption Institutions and the Problems of Revising the KPK Law." *Journal of Law & Development*, Vol. 49, No. 3, 2019, pp. 445–447.

[9] Nur Basuki Winamno, 2008, *"Abuse of Authority and Corruption* Crimes", Laksbang Mediatama, Yogyakarta , p. 65.

[10] *Ibid*., p. 70.

[11] Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

and (3), which define prosecutors and public prosecutors as officials authorised to prosecute and enforce court decisions and other authorities based on the law.[12]

In general, regulations concerning the Attorney General's Office revolve around the function of prosecution and other tasks inherent in the criminal justice system.[13] However, the development of criminal acts, particularly corruption as an extraordinary crime that is increasingly complex through the use of information technology, requires an expansion of the meaning of law enforcement authority.[14] The revision of the Attorney General's Office Law through Law Number 11 of 2021, among other things, gave rise to the provisions of Article 30C letter i, which provides space for the Attorney General's Office to conduct wiretapping based on special laws governing wiretapping and to establish a monitoring centre in the field of criminal offences. This provision intersects with the wiretapping regime in the Electronic Information and Transactions Law (EIT Law), which provides a normative basis for interception in the context of criminal law enforcement.[15]

On the other hand, the general procedures for prosecution are regulated in Law No. 8 of 1981 on Criminal Procedure (KUHAP). Article 1 paragraph (6) of the KUHAP stipulates that the prosecutor is an official who is authorised to act as a public prosecutor and to execute court decisions that have permanent legal force, while the public prosecutor is a prosecutor who is authorised to prosecute. However, the KUHAP does not explicitly regulate wiretapping as a separate piece of evidence, thus creating room for interpretation when wiretapping is used in the evidentiary process.[16]

From a modern procedural law perspective, wiretapping is a highly intrusive investigative technique because it directly infringes on the right to privacy. Therefore, wiretapping must be subject to the principles of legality, proportionality and accountability. In Indonesia, the regulation of wiretapping has not been accommodated in a single comprehensive law, but is scattered across various sectoral regulations, such as the Electronic Information and Transactions Law, the Narcotics Law, the Corruption Eradication Law, the Intelligence Law, and others. This fragmentation of regulations has the potential to create legal uncertainty, particularly with regard to the authorised institutions, procedures, and limits of authority.[17]

In this context, Constitutional Court (MK) Decision Number 5/PUU-VIII/2010 is very important. In this ruling, the Constitutional Court emphasised that the authority to conduct wiretapping as a form of restriction on human rights can only be justified if it is regulated explicitly and comprehensively in law, containing at least the following elements: who has the authority to conduct wiretapping, the procedures and methods, specific objectives, duration, oversight mechanisms, management and use of wiretapping results, and restrictions on access to wiretapping data.[18] This ruling initially arose from a review of the wiretapping provisions in the KPK Law, but doctrinally became the "minimum standard" for all wiretapping regulations in legislation. When measured against the parameters of the Constitutional Court's ruling, Article 30C letter i of the Attorney General's Office Law is considered by various academic studies to still have very minimal regulations and therefore requires reconstruction or revision to be in line with constitutional standards regarding restrictions on the right to privacy.[19]

In the ASEAN region, comparatively speaking, it appears that a number of countries have placed wiretapping powers within the framework of specific laws that are relatively more detailed and integrated with the anti-corruption system. In Malaysia, *the Malaysian Anti-Corruption Commission Act* 2009 (MACC Act) grants broad powers to the Malaysian Anti-Corruption Commission (MACC) to conduct investigative actions, combined with communication interception powers under *the Criminal Procedure Code* (Section 116C), which allows the Attorney General or *Public Prosecutor* to authorise the interception of communications for the purpose of proving certain criminal offences, including corruption.[20] In Singapore, *the Prevention of Corruption Act* (PCA) 1960 grants very strong investigative powers to *the Corrupt Practices Investigation Bureau* (CPIB), which are combined with the *Criminal Procedure Code* regime so that the CPIB can access various intrusive investigative instruments including searches, seizures and communication surveillance. However, this is within a framework of relatively clearly regulated procedures and

[12] Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Attorney General's Office.

[13] Moeljatno, *Principles of Criminal Law (Revised Edition)*, Jakarta: Rineka Cipta, 2021, p. 45.

[14] Andi Hamzah, Eradicating Corruption, Jakarta: Sinar Grafika, 2019, p. 12.

[15] Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions.

[16] M. Yahya Harahap, *Discussion of Issues and Application of the Criminal Procedure Code*, Jakarta: PT. RajaGrafindo Persada, 2020, p. 215.

[17] Enny Agustina, *Contemporary Criminal Procedure Law*, Jakarta: Rajawali Pers, 2022, p. 64

[18] Iwan Sofyan, "Model of Regulation of Wiretapping Authority by the Attorney General's Office in Handling Corruption Crimes", *PILAR: Philosophia Law Review*, Vol. 4, No. 1 (2024), pp. 43-70.

[19] *Ibid*.

[20] Wikisource, *Malaysian Anti-Corruption Commission Act 2009.pdf/47*, (18 November 2023), accessed on 30 November 2025, at 17:01 WIB, https://en.wikisource.org/w/index.php?title=Page:Malaysian_Anti-Corruption_Commission_Act_2009.pdf/47&oldid=13647875

authorisations.[21] Meanwhile, Thailand, through *its Organic Act on Anti-Corruption*, provides a more structured institutional and procedural legal basis for anti-corruption agencies, including strengthening oversight and accountability mechanisms in the use of special investigative powers.[22]

From this comparative perspective, it appears that the trend in ASEAN countries is not only to grant special powers to law enforcement agencies or anti-corruption agencies to conduct wiretapping, but also to place them within a detailed regulatory design, with clear authorisation (e.g. by *the Public Prosecutor* or the courts), time limits, specific objectives, and oversight mechanisms. This condition reinforces the argument that the regulation of the Attorney General's wiretapping authority in Article 30C letter i of the Attorney General's Law needs to be clarified and refined, so that it does not merely "delegate" to special laws, but truly meets human rights protection standards and *regional best practices*.

Another equally important issue is the enactment of the new Criminal Code (KUHP), namely Law No. 1 of 2023 on the Criminal Code. This new Criminal Code, which was designed as a codification of national criminal law, not only reorganises the provisions on general criminal offences, but also more strictly regulates a number of acts related to cybercrime, illegal access, and interception or violation of electronic communication confidentiality, as a form of protection of the right to privacy and personal data.[23] On the other hand, in the field of corruption, the Anti-Corruption Law still applies as *lex specialis*, resulting in new regulations governing the relationship between the Criminal Code (as *lex generalis*), the Anti-Corruption Law, the ITE Law, and the Attorney General's Office Law. Under this new arrangement, any granting of wiretapping authority to law enforcement agencies, including the Attorney General's Office, must be increasingly sensitive to the strengthened standards of human rights protection, both through the new Criminal Code and through Constitutional Court decisions.

In the context of criminal acts of corruption, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 grants investigators the authority to conduct wiretapping in order to uncover crimes of corruption as *extraordinary crimes*. However, these regulations place greater emphasis on granting general authority to investigators, without specifically detailing the configuration of wiretapping authority of the Attorney General's Office as a public prosecution agency that can also act as an investigator of corruption crimes. This ambiguity has led to debate regarding the legal basis for wiretapping by the Attorney General's Office. On the one hand, some academics argue that the Attorney General's Office can conduct wiretapping through cooperation with institutions that have explicit authority to do so, such as the Corruption Eradication Commission (KPK) or the police. On the other hand, the Attorney General's Office's practice of continuing to use wiretapping in uncovering cases, especially major corruption cases, raises serious questions about its position, limits, and legal accountability mechanisms.

The debate over the design of wiretapping regulations is also reinforced by Constitutional Court decisions, not only in Decision No. 5/PUU-VIII/2010, but also in other decisions which, in principle, emphasise that restrictions on rights through wiretapping must be clearly regulated in law, must not give rise to uncertainty, and must be accompanied by effective oversight mechanisms.[24] In line with this, various recent studies have explicitly proposed reconstructing the regulation of the Attorney General's Office's wiretapping authority in the Attorney General's Office Law to bring it into line with the standards set by the Constitutional Court, through the drafting of a special wiretapping law or a comprehensive revision of the provisions of Article 30C letter i.

The debate over the legality of wiretapping occurred in a major case in 2023, namely the alleged corruption in the tin commodity trade in the Mining Business Permit (IUP) area of PT Timah Tbk from 2015 to 2022. The Attorney General's Office stated that wiretapping played a role in uncovering communications between private parties and officials suspected of being involved in the misuse of mining permits and the management of mining products.[25] However, it was not openly explained whether the wiretapping

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[21] GLI: Global Legal Insights, *Bribery & Corruption Laws and Regulations 2025 – Singapore Free Online Access*, (5 December 2024), accessed on 30 November 2025, at 18:51 WIB, https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/singapore/?utm_source=chatgpt.com

[22] FSR and Corporate Crime Notes, Thailand's new anti-corruption law targets foreign corporates, (Herbert Smith Freehills Kramer LLP, 18 September 2018), accessed on 30 November 2025, at 17:12 WIB, https://www.hsfkramer.com/notes/fsrandcorpcrime/2018-09/thailands-new-anti-corruption-law-targets-foreign-corporates?utm_source=chatgpt.com

[23] ICLG: Cybersecurity Laws and Regulations, Cybersecurity Laws and Regulations Indonesia 2026, (21 November 2025), accessed on 30 November 2025, at 17:01 WIB, https://iclg.com/practice-areas/cybersecurity-laws-and-regulations/indonesia?utm_source=chatgpt.com

[24] *Ibid*., Iwan Sofyan, "Model of Regulation of Wiretapping Authority by the Attorney General's Office in Handling Corruption Crimes", *PILAR: Philosophia Law Review*, Vol. 4, No. 1 (2024), pp. 43-70.

[25] CNN Indonesia, "Attorney General's Office Uncovers Alleged Rp271 Trillion Tin Mining Corruption, Uses Wiretapping", 16 October 2023. Accessed from: https://www.cnnindonesia.com.

was carried out through inter-agency cooperation or directly by the Attorney General's Office, which raised serious questions about the legality of the procedures used.

A number of legal experts have criticised this situation. Prof. Romli Atmasasmita emphasised that wiretapping can only be legally justified if it is carried out in accordance with explicit and specific laws and regulations.[26] Prof. Jimly Asshiddiqie even emphasised that wiretapping, as a form of restriction of human rights, can only be carried out if it complies with the principle *of due process of law* and obtains formal legitimacy through written law.[27]

Thus, the Attorney General's Office's authority to conduct wiretapping raises legal issues that cannot be separated from the issue of synchronisation between legal regimes (Attorney General's Office Law – Criminal Procedure Code – New Criminal Code – Electronic Information and Transactions Law – Corruption Eradication Law), while also demonstrating the need for regulatory reconstruction so that extraordinary powers in combating corruption remain within a clear, accountable legal framework that is in line with the protection of citizens' constitutional rights. On the one hand, the state needs an effective instrument in the form of wiretapping to uncover sophisticated and organised corruption crimes; on the other hand, the use of this instrument must be based on a definite legal foundation, in accordance with the doctrine of the Constitutional Court, as well as learning from the best practices of ASEAN countries that are more structured in regulating interception powers.

From this explanation, it can be concluded that the Attorney General's Office can conduct wiretapping in the field of law enforcement intelligence in accordance with applicable laws, but there is no law that specifically regulates wiretapping comprehensively. This shows the lack of consistent regulations on wiretapping, which can lead to improper implementation and harm the constitutional rights of citizens. Therefore, a special law is needed that details the procedures for wiretapping for various authorised institutions, in order to ensure its implementation is fair and in accordance with the principles of law.[28] The legal basis for wiretapping used by the author is the ITE Law.

In addition, corruption is a type of crime that can affect various interests related to human rights, state ideology, the economy, state finances, national morals, and so on, which is a malicious behaviour that tends to be difficult to combat.[29] This crime is also difficult to uncover because the perpetrators use sophisticated tools and are carried out by more than one person in a covert and organised manner. With the increase in cases of this crime, the government must be serious and play a more active role in eradicating corruption. That is why Article 26 of the Corruption Eradication Law regulates the authority of investigators to conduct wiretapping in order to uncover these extraordinary crimes.

Based on the above issues, the author formulates the problem as follows: What are the legal implications of the Indonesian Attorney General's Office exercising its authority to conduct wiretapping? The purpose of this study is to identify and analyse the legal implications of the Indonesian Attorney General's Office exercising its authority to conduct wiretapping in the handling of corruption cases.

II. RESEARCH METHODS

The type of research that the author will use in this study is normative research, which is defined as research that places law as a structure within the legal norm system.[30] The legal norm system that is constructed concerns the norms, principles, and rules of legislation, court decisions, and the doctrines of experts. The author uses a juridical-normative type of research in examining legal issues in this study based on sources such as applicable laws and regulations, legal theories, and doctrines from legal experts as references.

The approaches that the researcher will use in this study are the *statute approach*, *the conceptual approach*, and the *comparative approach*.

1. *Statute Approach*; and

   This approach is carried out by examining all laws and regulations related to the legal issues being studied. The statutory approach can be done by studying the consistency/compatibility between the Constitution and laws, or between one law and another, and so on.

2. *Conceptual Approach*.

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[26] Romli Atmasasmita, *Criminal Law and Human Rights*, Jakarta: Ghalia Indonesia, 2011, p. 142.

[27] Jimly Asshiddiqie, *The Idea of a Social Constitution*, Jakarta: LP3ES, 2020, p. 89.

[28] ELSAM, Intelligence Bill Still Premature, Intelligence Wiretapping Must Be Regulated in the Wiretapping Procedure Law, published in http://lama.elsam.or.id/mobileweb/article.php?id=1381&lang=in, accessed on 24 March 2022.

[29] Evi Hartanti, 2008, "*Corruption Crimes: Second Edition*", Sinar Grafika, Jakarta , p. 2.

[30] Mukti Fajar and Yulianto Achmad, 2017, *"Dualism in Normative and Empirical Legal* Research", Pustaka Pelajar, Yogyakarta , p. 33.

The conceptual approach is an approach that provides an analysis of the resolution of issues in legal research from the perspective of the underlying legal concepts, or from the values contained in the norms.[31]

According to Peter Mahmud Marzuki, *the conceptual approach* is an approach that departs from the views and doctrines that have developed in legal science in order to find ideas that give rise to relevant legal understandings, concepts, and principles, as a basis for constructing a legal argument in resolving the legal issues at hand.[32]

3. *Comparative* Approach

The comparative approach is an approach used to compare the laws of one country with those of another. Legal comparison is essentially a philosophical activity. Legal comparison is a comparative study or review of the intellectual concepts behind the fundamental legal institutions of one or more foreign legal systems.

This research is descriptive and analytical in nature, as it will describe and analyse in detail the implementation of wiretapping by the public prosecutor's office in corruption cases. In addition, this research is normative in nature, as it will evaluate the extent to which the public prosecutor's authority over wiretapping policies in corruption cases complies with applicable legal provisions.

III. RESULTS AND DISCUSSION

A. *Legal Implications of the Implementation of the Authority of the Attorney General's Office of the Republic of Indonesia in Conducting Wiretapping in the Handling of Corruption Crimes*

The authority of the Attorney General's Office of the Republic of Indonesia in handling corruption has unique and strategic characteristics because the Attorney General's Office plays a dualistic role, namely as an investigator and at the same time a public prosecutor in certain criminal acts, including corruption as regulated in the Anti-Corruption Law.[33] In the context of corruption as an extraordinary crime, the Attorney General's Office is required to have effective law enforcement instruments, including the authority to conduct wiretapping (*interception*) as a very important investigative technique in uncovering corruption crimes that are closed, systematic, and often utilise modern communication technology.[34]

Conceptually, interception is a technique that can increase the effectiveness of uncovering corruption, but at the same time it is an intrusive act that limits the privacy rights of citizens. Therefore, its justification cannot be based solely on the practical needs of law enforcement, but must be supported by clear legality, strict procedures, and measurable oversight mechanisms in order to be in line with the principles of the rule of law and the protection of human rights. The legal implications of the Attorney General's Office exercising its wiretapping authority ultimately depend on: (i) whether this authority is explicitly regulated in law, (ii) whether its implementation complies with due *process of law*, and (iii) whether the results can be accounted for as valid evidence in court.

From the perspective of authority theory, every action taken by government officials must be based on clear legality as a condition for the validity of state administrative actions.[35] Authority without a clear legal basis has the potential to lead to arbitrary actions and violate the principle of the rule of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.[36] Thus, the implementation of wiretapping by the Attorney General's Office as an instrument to restrict the rights of citizens must be based on rigid and unambiguous regulations.[37]

The legal basis relating to the Attorney General's Office's authority to conduct wiretapping can be outlined as follows: **First**, Article 30C letter i of the Attorney General's Office Law provides a general formulation that the Attorney General's Office may conduct wiretapping based on the law and establish a centre for monitoring criminal acts.[38] However, this provision is a blanket provision, as it does not specify the implementing subject, the procedure for requesting permission, the time frame, the monitoring mechanism, or the management of wiretapping results.[39]

The absence of detailed operational norms creates *legal uncertainty* because intrusive powers are granted without adequate procedural restrictions. Within the framework of Constitutional Court Decision Number 5/PUU-VIII/2010, wiretapping can only be justified if it is regulated by law that contains at least the authority, the authorised subject, the authorising authority, the procedures, the specific objectives, the time frame, the management of results, access restrictions, supervision, and the use of wiretapping results.

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[31] Peter Mahmud Marzuki, 2019, "*Legal Research*", Kencana, Jakarta , pp. 135-136.

[32] Laurensius Arliman S., 2018, "*The Role of Legal Research Methodology in the Development of Legal Science in* Indonesia", Jurnal Ilmu Huku, Vol. 1, No. 1 (April 2018) , pp. 1-21

[33] Corruption Eradication Commission, *KPK Annual Report 2023*, Jakarta: KPK, 2023, p. 12.

[34] Barda Nawawi Arief, *Corruption Crime Prevention Policy*, Jakarta: Rajawali Press, 2020, p. 45.

[35] Philipus M. Hadjon, *Legal Protection for the Indonesian People*, Surabaya: Bina Ilmu, 1987, p. 25.

[36] The 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3).

[37] Jimly Asshiddiqie, *The Constitution and Constitutionalism in Indonesia*, Jakarta: Konpres, 2006, p. 66.

[38] Law No. 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia, Article 30C letter i.

[39] Dwi Siregar, "Problems with the Attorney General's Office's Wiretapping Authority," *Journal of Law Enforcement*, Vol. 9, No. 2 (2022), p. 156.

If these parameters are used as a constitutional test, then Article 30C letter i basically only fulfils the aspect of "recognition of authority", but does not yet meet other procedural standards, thus opening up room for legal disputes.

Secondly, the Anti-Corruption Law grants investigators the authority to carry out special measures, including wiretapping, in order to uncover corruption as an extraordinary crime.[40] However, the regulations remain general in nature and do not specifically regulate the configuration of wiretapping authority of the Attorney General's Office as a public prosecutor that can also act as an investigator of corruption crimes.[41]

Third, the Electronic Information and Transactions Law provides a regulatory basis for interception and access to electronic information in the context of law enforcement.[42] However, this law does not explicitly and specifically designate the Attorney General's Office as the entity conducting wiretapping, but rather emphasises the legitimacy of interception in the context of criminal law enforcement in general.[43]

Fourth, the Criminal Procedure Code (KUHAP) as general criminal procedure law does not regulate wiretapping as a separate piece of evidence.[44] In practice, the results of wiretapping are often constructed as part of circumstantial evidence or linked to witness statements and letters, thus potentially giving rise to debate when tested in court.[45]

Fifth, the new Criminal Code reinforces certain prohibitions related to illegal access, interception, and violation of electronic communication confidentiality as a form of protection of the right to privacy and personal data.[46] On the other hand, in the field of corruption, the Anti-Corruption Law still applies as lex specialis, resulting in a new configuration of the relationship between the Criminal Code (lex generalis), the Anti-Corruption Law, the ITE Law, and the Attorney General's Office Law. This new configuration requires that any granting of wiretapping authority to law enforcement agencies, including the Attorney General's Office, be increasingly sensitive to human rights protection standards and the principle of the rule of law.[47]

More specifically, the regulation of wiretapping authority by the Attorney General's Office is currently scattered across various sectoral laws without a single specific norm that regulates it comprehensively. This can be seen in the following table:

Provisions	**Legal Position**	**Relevance to Wiretapping**	**Weaknesses in relation to the Attorney General's Office**
Attorney General's Office Law	Institutional regulations	Article 30C letter i grants authority "based on the law"	Does not regulate procedures, authorisation, time limits, supervision
Anti-Corruption Law	Lex specialis on corruption	Investigators may conduct wiretapping	Does not specify the role of the Attorney General's Office as an investigator
Electronic Information and Transactions Law	Digital interception	Regulates the interception of electronic devices/evidence	Does not explicitly mention the Attorney General's Office as the implementing agency
KUHAP	Lex generalis criminal proceedings	Does not regulate wiretapping	Does not explicitly recognise wiretapping as evidence
Criminal Code 2023	Privacy protection	Regulates illegal interception as a criminal offence	Requires increasingly strict legality of wiretapping

This fragmentation creates *legal uncertainty*, especially when linked to John Rawls' theory of justice, which states that any restriction of rights must be carried out within the corridor of fairness to ensure the equality of citizens before the law. Wiretapping

[40] Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on Eradicating Corruption, Article 26.

[41] Andi Marwan, "The Authority of Prosecutors in Handling Corruption Cases," *Lex Crimen Journal*, Vol. 10, No. 4 (2021), p. 80.

[42] Law No. 11 of 2008 in conjunction with Law No. 19 of 2016 concerning Electronic Information and Transactions, Article 31.

[43] Agung Sugiarto, "The Legality of Wiretapping in the ITE Law," *Rechtens Journal*, Vol. 8, No. 1 (2019), p. 64.

[44] Code of Criminal Procedure (KUHAP).

[45] Mochammad Sidiq, "Proving Corruption Crimes through Wiretapping," *Jurnal Peradilan*, Vol. 11, No. 3 (2020), p. 213.

[46] Law Number 1 of 2023 concerning the Criminal Code, Articles 278–280.

[47] Decision of the Constitutional Court of the Republic of Indonesia Number 5/PUU-VIII/2010; Decision of the Constitutional Court of the Republic of Indonesia Number 20/PUU-XIV/2016.

that does not have a clear legal basis has the potential to violate the principle of fairness because it opens up the possibility of repressive actions without control.

In this context, legal uncertainty is not only normative-abstract in nature, but also has a direct impact on the validity of evidence. Wiretapping conducted without verifiable authorisation, such as a court order or independent authority, has the potential to be challenged as a violation *of due process of law*, making the results vulnerable to being deemed *unlawful evidence*. At this point, the issue of legality is not merely a theoretical debate, but can determine whether the prosecution's evidence will be strong or collapse as a result of formal testing in court.

From a human rights perspective, wiretapping is an act that restricts the rights to privacy, security, and private communication, which are protected by the Constitution and international instruments such as *the Universal Declaration of Human Rights* (UDHR) and *the International Covenant on Civil and Political Rights* (ICCPR).[48] The Constitutional Court, in its Decision Number 5/PUU-VIII/2010, has emphasised that restrictions on rights can only be imposed through laws that regulate in detail:

1. The specific purpose of the wiretapping
2. Who is authorised
3. The limits on the subjects that can be intercepted
4. Procedural standards (authorisation and duration)
5. Supervision and accountability mechanisms[49]

Wiretapping arrangements by the Attorney General's Office that do not meet these standards have the potential to violate the principles of respect, protect, and fulfil in modern human rights theory.[50] Due to the lack of adequate operational norms, the risk of *abuse of power* and *arbitrary surveillance* is high.[51]

Furthermore, the absence of external oversight norms and standards for managing wiretapping results, such as access restrictions, audits, and the destruction of irrelevant data, places citizens in a vulnerable position, as the mechanisms for redress in cases of unlawful wiretapping become ineffective. Thus, the human rights implications of uncontrolled surveillance do not stop at the violation of privacy rights alone, but also raise the issue of state accountability in fulfilling its obligation to protect the constitutional rights of citizens.

In the perspective of the theory of Law Enforcement proposed by Lawrence M. Friedman, the success of law enforcement is influenced by three components: legal structure, legal substance, and legal culture.[52] If one of these components does not function optimally, the law cannot be enforced effectively. In the context of wiretapping by the Attorney General's Office:

1. Legal structure: wiretapping authority does not yet have a clear system of authorisation and internal oversight
2. Legal substance: wiretapping norms lack procedural standards
3. Legal culture: public trust in the use of special powers remains low

Therefore, the enforcement of corruption laws is ineffective even though wiretapping is conceptually necessary.

This condition has a direct impact on the quality of evidence obtained through wiretapping without a court order or independent authority, which can be declared as unlawful *evidence*, thus potentially applying the *fruit of the poisonous tree* doctrine: evidence derived from illegal wiretapping is also flawed and cannot be used in court.[53] This contradicts the principle of due process of law, which requires that convictions can only be made through lawful and fair evidentiary procedures.

This implication reveals a paradox in law enforcement: on the one hand, wiretapping is seen as an effective instrument for uncovering corruption, but on the other hand, if its legal basis and procedures are not clear, wiretapping can actually become a "weak point" that defendants can use to delegitimise evidence. In other words, the more intrusive an authority is, the higher the legal standards required; if these are not met, the effectiveness of law enforcement can become counterproductive.

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[48] *Universal Declaration of Human Rights*, 1948, Articles 12 and 17; *International Covenant on Civil and Political Rights*, 1966, Article 17.

[49] Constitutional Court of the Republic of Indonesia, *Decision No. 5/PUU-VIII/2010 on the Review of Law No. 11 of 2008 on Electronic Information and Transactions*

[50] Magdalena Sepúlveda, Theo van Banning, Gerd O. van Genugten, and Cees Boone, *Human Rights Reference Handbook*, Costa Rica: University for Peace, 2004, pp. 14–15.

[51] Alfred Maurice de Zayas, "The Promotion and Protection of Human Rights in the Context of Digital Surveillance", *International Journal of Human Rights*, Vol. 24, No. 10 (2020), pp. 1535–1554.

[52] Lawrence Meir Friedman, *The Legal System: A Social Science Perspective*, New York: Russell Sage Foundation, 1975, pp. 14–15.

[53] Munir Fuady, *Criminal Evidence Law Theory*, Kencana, Jakarta, 2021, pp. 102–104.

As a consequence, the Attorney General's Office faces the risk of failing to prove major corruption cases that rely heavily on wiretapping, such as the Jiwasraya, Asabri, BTS Kominfo, and tin trade cases.[54] Public criticism has also arisen because the Attorney General's Office does not have a clear mechanism for wiretapping, whether it is done independently or through other institutions such as the Corruption Eradication Commission (KPK) or the police. This lack of clarity has the potential to undermine the legitimacy of law enforcement and cause public distrust of the Attorney General's Office.[55]

In addition, there are institutional implications in the form of potential overlap of authority with other institutions that have more established wiretapping devices (particularly the KPK), which can lead to coordination conflicts, uncertainty over the ownership of wiretap results, and issues with *the* chain *of* custody of electronic evidence. When procedural standards are not standardised, inter-institutional synergy is prone to turning into a competition for authority, which actually weakens the eradication of corruption.

The issue of the Attorney General's Office's wiretapping authority also has direct implications for the effectiveness of law enforcement. Based on Lawrence M. Friedman's theory of law enforcement, the effectiveness of law enforcement is largely determined by the harmonisation of legal structure, legal substance, and legal culture.[56] In the Indonesian context, a legal structure that does not provide a clear wiretapping mechanism for the Attorney General's Office disrupts law enforcement at the initial stage of the evidence process. Meanwhile, partial and ambiguous legal substance has led to debates on the legality of using wiretapping evidence in court. The legal culture of society shows a high sensitivity to human rights violations, thus demanding that wiretapping be carried out transparently, accountably, and in accordance with legal procedures.[57]

From the perspective of John Rawls' theory of justice, law enforcement actions that restrict rights must have substantive and procedural justification. Substantive justice relates to the purpose of wiretapping to support the public interest in eradicating corruption.[58] However, procedural justice must be fulfilled through clear formal regulations in order to minimise repressive actions.[59] When the Attorney General's Office conducts wiretapping without an adequate legal basis, *the principle of justice as fairness* is violated because the procedures that protect citizens from potential abuse of authority are not fulfilled.[60]

Furthermore, from a human rights perspective, wiretapping must be based on the principles of necessity, *legitimacy* (truth of purpose), and *proportionality* (reasonable limits).[61] When wiretapping is carried out by institutions that do not have clear legal standards, such actions can be considered an excessive restriction of rights without legal protection. The state has an obligation to respect, protect and fulfil human rights, so that an inadequate legal basis can be considered a violation of *state responsibility*.[62]

Another impact of the legality problem of wiretapping by the Attorney General's Office can be seen in how the results of wiretapping are considered in criminal trials for corruption. In several strategic cases, such as Jiwasraya and Asabri, the Attorney General's Office presented electronic communication recordings as evidence of collusion in investment management practices that caused trillions of rupiah in state losses.[63] However, wiretapping that is not based on clear authorisation procedures can lead to the suspect arguing that the evidence is "legally flawed" and violates privacy rights, so that the judge may be asked to set it aside.[64]

This potential problem is even greater in the Kominfo 4G BTS case, where digital communications are the main evidence of bribery and orders to manipulate the project. If the digital evidence is then deemed invalid because it was obtained through wiretapping that did not have a clear legal basis, the position of the Attorney General's Office as the first law enforcement agency to initiate action in this case will be delegitimised. This would certainly contradict the objectives of corruption eradication, which demand effectiveness, legal certainty, and justice in the process.[65]

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[54] Febri Diansyah, "Legal Issues in Proving Corruption Cases: A Study of the Jiwasraya and Asabri Cases", *Journal of Integrity of the Corruption Eradication Commission*, Vol. 8, No. 1, 2022, pp. 44–47.

[55] Ahmad Sofian, "Wiretapping Authority from a Human Rights Perspective", *Human Rights Journal*, Vol. 12, No. 2, 2021, pp. 155–157.

[56] Lawrence Meir Friedman, *The Legal System: A Social Science Perspective*, Russell Sage Foundation, New York, 1975, pp. 14–15.

[57] Satjipto Rahardjo, *Law Enforcement: A Sociological Review*, Genta Publishing, Yogyakarta, 2019, pp. 57–59.

[58] John Bordley Rawls, *A Theory of Justice*, Harvard University Press, Cambridge, 1971, pp. 52–53.

[59] Jimly Asshiddiqie, *Law and Human Rights*, Rajawali Pers, Jakarta, 2020, pp. 201–203.

[60] Herlambang P. Wiratman, "Justice as Fairness in the Indonesian Legal System", *IUS QUIA IUSTUM Law Journal*, Vol. 28, No. 1, 2021, pp. 88–90.

[61] Martin Scheinin, *Surveillance and Human Rights: Thematic Study*, OHCHR, Geneva, 2015, pp. 10–12.

[62] Magdalena Sepúlveda, Theo van Banning, Gerd O. van Genugten, and Cees Boone, *Human Rights Reference Handbook*, University for Peace, Costa Rica, 2004, pp. 34–35.

[63] *Loc. Cit.*, Febri Diansyah.

[64] Andi Hamzah, *Indonesian Criminal Procedure Law*, Sinar Grafika, Jakarta, 2019, pp. 217–218.

[65] Ermansyah Djaja, *Eradicating Corruption*, Prenada Media, Jakarta, 2021, pp. 76–78.

The tin trade case involving PT Timah Tbk's IUP area, which attracted public attention in 2023, also highlights this risk. The Attorney General's Office stated that wiretapping played an important role in uncovering a series of crimes involving businesspeople and high-ranking officials. However, the public did not receive any information regarding the procedural legality of the wiretapping, including whether it was carried out independently or in collaboration with other institutions such as the Corruption Eradication Commission (KPK) or the police. This lack of transparency demonstrates the Attorney General's Office's weak accountability in the use of its wiretapping authority.[66]

In addition to the issue of legality, the issue of coordination has also come under scrutiny. The Attorney General's Office often relies on the wiretapping infrastructure of other institutions, such as the KPK, which, under Law No. 19 of 2019, has strong wiretapping powers and is considered the law enforcement agency that is most prepared in terms of technology and the legal basis for wiretapping. This dependence is prone to causing conflicts of authority, especially when the cases handled have overlapping jurisdictions between the Attorney General's Office and the KPK.[67] This kind of situation can weaken the synergy between law enforcement agencies and actually slow down the process of eradicating corruption.

From a legal culture perspective, public trust in the Attorney General's Office's use of wiretapping techniques is highly dependent on its accountability and procedural transparency. In an increasingly critical democratic climate, the public demands that wiretapping by the Attorney General's Office not be used as a tool for political criminalisation or authoritarian actions that suppress individual freedoms.[68] Therefore, the Attorney General's Office must be able to demonstrate that wiretapping is carried out within a strict and accountable legal framework.

From these provisions, it is clear that the legal basis for the Attorney General's Office's wiretapping authority is still based on norms scattered across various laws and regulations, without a single comprehensive regulation that provides detailed provisions. As a result, there is broad room for interpretation as to whether the Attorney General's Office can conduct wiretapping directly or only through cooperation with other institutions that have explicit wiretapping authority, such as the Corruption Eradication Commission (KPK) or the police.[69]

Constitutional Court Decision Number 5/PUU-VIII/2010 emphasises that wiretapping, as a form of restriction on human rights, can only be justified if it is regulated explicitly, clearly and comprehensively in law. The minimum elements that must be regulated include: the institutions authorised to conduct wiretapping, procedures and methods, specific objectives, duration, oversight mechanisms, management and use of wiretapping results, and restrictions on access to wiretapping data.

If Article 30C letter i of the Attorney General's Office Law is measured against the parameters of the Constitutional Court's decision, it appears that the existing regulations do not yet meet constitutional standards. The legal implications include:

1. Potential *legal uncertainty*

   General and vague norms give rise to the potential for objections from suspects/defendants or legal counsel that the Attorney General's Office's wiretapping actions do not formally meet the requirements of legality. This could form the basis for a pretrial hearing or objection in the evidence process.
2. Potential violation of the principles of legality and *due process of law*

   The absence of detailed regulations regarding authorisation, procedures, time limits, and supervision creates the risk of wiretapping being carried out arbitrarily, which is contrary to the principles of legality, proportionality, subsidiarity, and *due process of law.*
3. Potential *judicial review* and invalidation of evidence

   The lack of clarity in the regulations could form the basis for a judicial review by the Constitutional Court or provide grounds for judges to declare evidence obtained through wiretapping to be invalid and exclude it (*exclusionary rule*), thereby weakening the construction of evidence in a case.
4. Contradiction with standards for the protection of privacy and personal data

   Strengthened privacy protection in the new Criminal Code and personal data protection regulations require that all interceptions be subject to detailed rules. Wiretapping by the Attorney General's Office without a comprehensive legal framework has the potential to violate privacy rights and give rise to claims for restoration of rights.

Thus, from the perspective of the fundamental principles of the rule of law, the current implementation of wiretapping authority by the Attorney General's Office remains in a "grey area" that is prone to legal disputes and delegitimisation of the law enforcement process.

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[66] Ahmad Hudi Prayogo, "Transparency of Wiretapping in Mining Law Enforcement," *Recht Vinding Journal*, Vol. 12, No. 3, 2023, pp. 355–357.

[67] Yudi Kristiana, “Disharmonisation of the Authority of the Corruption Eradication Commission and the Attorney General’s Office in Corruption Investigations”, *KPK Integrity Journal*, Vol. 7, No. 2, 2021, pp. 214–216.

[68] Susi Dwi Harijanti, *Human Rights in a Democratic State Based on the Rule of Law*, Rajawali Pers, Jakarta, 2020, pp. 143–145.

[69] M. Fadli Andika, *Criminal Procedure Law in the Modern Judicial System*, Kencana, Jakarta, 2022, pp. 193–195.

The Authority of the Attorney General's Office of the Republic of Indonesia in Wiretapping Corruption Cases

In corruption cases, wiretap results are often key evidence to prove the existence of bribery agreements, criminal conspiracy, project rigging, and other forms of state capture. However, the fundamental legal weaknesses of wiretapping by the Attorney General's Office have implications:

1. Debate over the validity of evidence
   The defendant's legal counsel may question the legality of evidence obtained through wiretapping, arguing that the authority to conduct wiretapping is not regulated in detail, and therefore the evidence is invalid.
2. The risk *of the fruit of the poisonous tree* doctrine
   If wiretapping is declared illegal, then further evidence obtained from the results of wiretapping (searches, seizures, arrests) is also at risk of being deemed invalid because it is considered the "fruit of the poisonous tree".
3. Inconsistency in court decisions
   Due to the absence of standard regulations, the assessment of the validity of wiretapping results is highly dependent on the interpretation of each judge. As a result, there may be inconsistencies in court decisions in cases that involve wiretapping results.
4. Impact on the effectiveness of corruption eradication
   From an effectiveness perspective, the lack of clarity in the legal basis weakens the position of the Attorney General's Office when the main evidence used is potentially questioned and dismissed in court.

The lack of clarity regarding the regulation of wiretapping authority has prompted the Attorney General's Office to rely on coordination and cooperation mechanisms with other institutions that already have clearer wiretapping authority, such as the Corruption Eradication Commission (KPK) and the police. This has institutional implications:

1. Institutional dependence
   The Attorney General's Office has become dependent on the wiretapping infrastructure of other institutions, which can hinder the speed and independence of the corruption case handling process.
2. Overlapping authority and coordination conflicts
   In cases handled by more than one institution, uncertainty about who conducts the wiretapping and who controls the results can trigger conflicts of authority and issues of evidence integrity.
3. Uneven accountability
   Differences in internal and external oversight mechanisms in each institution raise questions about who is responsible if there are irregularities in the use of wiretap results.
4. Legitimacy issues in the public eye
   In high-profile cases, such as alleged corruption in the tin trade, the Attorney General's Office mentioned the use of wiretapping but did not explain its legal basis transparently, giving the public the right to question the legitimacy of such actions. This can erode public trust in law enforcement agencies.

From a comparative perspective, a number of ASEAN countries already have more structured wiretapping regulations, particularly in relation to combating corruption and organised crime. Clear regulations provide stronger legitimacy for the use of wiretapping, while ensuring the protection of human rights and the principle *of due process of law*.[70] This comparison is important to highlight the regulatory gap in Indonesia and as a reference for reforming the national legal system.

Countries such as Malaysia, Singapore, Thailand, Vietnam and the Philippines have placed wiretapping powers within a clear and integrated legal framework. Malaysia, through *the Malaysian Anti-Corruption Commission Act* 2009 (MACC Act), combines wiretapping authority with the authorisation *of the Public Prosecutor* as a guarantee of legal control.[71] Singapore bases its communication interception authority on *the Criminal Procedure Code,* which provides a strong basis for *the Corrupt Practices Investigation Bureau* (CPIB) to legally monitor and manage electronic evidence in court.[72]

Thailand, through *the Organic Act on Anti-Corruption*, places anti-corruption agencies within an integrated investigation system with internal and external oversight mechanisms.[73] Meanwhile, Vietnam, through its continuously updated *Anti-Corruption Law*, provides scope for technology-based surveillance measures overseen by the prosecution and judicial authorities. The Philippines

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[70] Tengku Ahmad Rithauddeen Tengku Ismail, "Comparative Legal Study on Interception Laws in ASEAN and Their Human Rights Implications", *ASEAN Anti-Corruption Journal*, Vol. 4, No. 1, 2021, pp. 23–25.

[71] Parliament of Malaysia, *Malaysian Anti-Corruption Commission Act 2009 (Act 694)*, Kuala Lumpur, enacted 6 January 2009.

[72] Corrupt Practices Investigation Bureau (CPIB) Singapore, "Overview of CPIB Powers and Procedures", Singapore Government Publications, 2020, pp. 5–7.

[73] National Anti-Corruption Commission Thailand, *Organic Act on Counter Corruption B.E. 2542 (1999)*, Bangkok, published 1999, pp. 4–6.

has *an Anti-Wire Tapping Act* which, although still general in nature, ensures that wiretapping requires court approval, thereby protecting citizens from excessive repressive measures.[74]

To clarify Indonesia's position, it is important to compare it with several ASEAN countries that are more advanced in regulating wiretapping powers within the framework of combating corruption. The table below provides a brief overview:

Country	**Main Anti-Corruption Agency**	**Main Legal Basis**	**Wiretapping/Interception Regulations**	**Key Features of Regulations**
Indonesia	KPK, Attorney General's Office, Police	Anti-Corruption Law; KPK Law; Attorney General's Office Law; ITE Law; Criminal Procedure Code; Criminal Code 2023	Wiretapping authority is regulated in a scattered manner; Article 30C letter i of the Attorney General's Office Law only refers to "based on the law" without detailed procedures	Regulatory fragmentation; no specific law on wiretapping; Constitutional Court standards have demanded comprehensive regulation, but this has not yet been realised
Malaysia	*Malaysian Anti-Corruption Commission* (MACC)	Malaysian Anti-Corruption Commission Act 2009; Criminal Procedure Code (CPC)	The MACC may use wiretapping and communication interception with the authorisation of the Public Prosecutor in accordance with the CPC	The legal basis is relatively centralised and integrated; the role of the Prosecutor/PP is clear as the authorising/authorising authority
Singapore	*National Anti-Corruption Commission (NACC)* (CPIB)	Prevention of Corruption Act (PCA) 1960; Criminal Procedure Code	The CPIB has strong powers to conduct intrusive investigative actions (searches, seizures, communication surveillance) with a clear authorisation framework	Broad powers but governed by detailed procedures; the positions of prosecutors and courts are clear in the authorisation scheme and use of evidence
Thailand	*National Anti-Corruption Commission* (NACC)	Organic Act on Anti-Corruption	Provides the institutional and procedural legal basis for the use of special investigative powers, including communication surveillance	More structured arrangements with oversight and accountability mechanisms; regulatory design emphasises integration between special powers and institutional controls

[74] Republic of the Philippines, *Republic Act No. 4200 – An Act to Prohibit and Penalise Wire-Tapping and Other Related Violations of the Privacy of Communication*, Manila, passed on 19 June 1965.

The table above shows that the trend in ASEAN countries is to grant special wiretapping powers to anti-corruption agencies and/or prosecutors, but to place these powers within detailed and integrated legislation, equipped with authorisation mechanisms (by the court or *public prosecutor*), time limits, specific objectives, and oversight.[75] In comparison, Indonesia is still in a position where the authority of the Attorney General's Office to conduct wiretapping is normatively recognised through Article 30C letter i, but does not yet have detailed operational regulations. As a result, there is room for broad interpretation and the legal implications, as described earlier, lead to legal uncertainty and potential violations of constitutional rights.

When viewed based on Friedman's theory of law enforcement, the success of the legal systems in these ASEAN countries is due to the synergy of three main elements: strong regulations, effectively functioning institutions, and a legal culture that supports transparency.[76] Indonesia has not fulfilled all three of these elements in the context of the Attorney General's wiretapping authority.

Furthermore, the implementation of wiretapping in other ASEAN countries places the judiciary as the main authorising authority as a form of safeguarding procedural justice (Rawls) and proportional protection of human rights.[77] This has not been achieved in Indonesia's sectoral regulations.[78]

To understand the potential legal issues in the implementation of wiretapping by the Attorney General's Office, the following is an illustration of the current mechanism:

[Determination of Wiretapping Targets by Investigating Prosecutors]
↓
[Coordination with Other Institutions (National Police/Corruption Eradication Commission?)]
↓
[Request for Access to Other Parties' Wiretapping Systems]
↓
[Implementation of Joint Wiretapping]
↓
[Acquisition and Management of Interception Results]
↓
[Use as Evidence in Court]

Evaluative Notes Graph:

1. No points indicate authorisation from the court;
2. No independent supervisory body;
3. No standard rules regarding procedural stages;
4. Control and accountability are not systematically guaranteed; and
5. The potential for disputes over the legality of evidence is very high

Within the framework of fairness (Rawls), this type of procedural model places suspects in a position that is vulnerable to privacy violations because there are no strong protection mechanisms in place. From a human rights perspective, the absence of a supervisory body indicates that the state has not fulfilled its obligation to protect under the theory *of human rights accountability*. Meanwhile, in Friedman's theory of law enforcement, the graph shows that the structure and substance of the law are still very weak, rendering it incapable of effectively supporting the implementation of wiretapping.

Through regional comparisons within ASEAN and analysis of the current wiretapping mechanisms, it can be confirmed that Indonesia still does not have *a Unified Wiretapping Law* or a single law that comprehensively regulates wiretapping as is the case in several comparable countries. Furthermore, the principle of judicial authorisation as a standard for the protection of human rights has not been fully adopted in the national legal system. The regulation of wiretapping authority is still delegative, overlapping, and sectoral in nature among various laws, resulting in unclear norms and weak legal certainty. On the other hand, harmonisation between law enforcement agencies regarding wiretapping has not been optimal, both in terms of coordination and accountability mechanisms. These conditions reinforce the argument that the Attorney General's Office's wiretapping authority still suffers from regulatory structural flaws and requires comprehensive reform so that law enforcement remains in line with the principles of a democratic state based on the rule of law and guarantees the protection of human rights.

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[75] Asman Abdullah, "Interpolating ASEAN Anti-Corruption Regulatory Frameworks: A Comparative Study of Legal Basis for Surveillance Measures", *Journal of Integrity of the Corruption Eradication Commission*, Vol. 7, No. 2, 2021, pp. 211–213.

[76] Lawrence Meir Friedman, *The Legal System: A Social Science Perspective*, Russell Sage Foundation, New York, 1975, pp. 14–15.

[77] John Bordley Rawls, *A Theory of Justice*, Harvard University Press, Cambridge, 1971, pp. 75–77.

[78] Herlambang Perdana Wiratman, "Problems with the Regulation of Wiretapping Authority in the Indonesian Criminal Justice System", *Journal of Law & Development*, Vol. 52, No. 3, 2022, pp. 455–457.

The Authority of the Attorney General's Office of the Republic of Indonesia in Wiretapping Corruption Cases

The legal implications of the Attorney General's Office's wiretapping authority can be seen clearly in the practice of proving criminal acts of corruption. In principle, valid evidence is evidence obtained in accordance with the procedures stipulated by law.[79] However, when wiretapping is carried out by the Attorney General's Office without a clear and structured legal basis, the legality of the wiretapping results is likely to be questioned in court.[80]

In the current context, wiretap results are generally included as part of circumstantial or documentary evidence under the Criminal Procedure Code (KUHAP). However, because the KUHAP does not recognise wiretapping as evidence in its own right and does not regulate the procedures for obtaining it, judges are very likely to consider such evidence to be formally flawed. Fulfilling the principle of legality in obtaining evidence is very important in order to avoid objections from the defence or pretrial motions that weaken the prosecution.

In relation to justice, wiretapping conducted without lawful procedural methods does not fulfil the principle of procedural justice as developed by Rawls because the legal process does not guarantee individuals' rights to privacy protection. In human rights theory, a violation of human rights occurs when restrictions on rights are imposed without a proper, clear and proportionate legal basis. Thus, wiretapping by the Attorney General's Office that is not based on standard rules constitutes a violation of rights that could result in the state being deemed to have failed to fulfil its obligation to protect its citizens.

At the level of criminal court practice, the risk of evidence being dismissed is higher if the defence can prove that the wiretapping results were obtained through unlawful actions. The doctrine used is "*fruit of the poisonous tree*" (evidence obtained from an unlawful source is entirely invalid). Thus, the seizure of money, arrests, or the discovery of new evidence obtained from illegal wiretapping can also be invalidated. This is a major obstacle to the effectiveness of corruption eradication, which generally relies heavily on electronic evidence.

In the Jiwasraya case (2020), the modus operandi of investment engineering and portfolio manipulation required proof through tracking communications between management and private parties. However, the Attorney General's Office was unable to explain the basis for authorising the wiretapping, so the evidence that appeared in court was dominated by transaction documents. In fact, if used appropriately, wiretapping can reveal motives, collusion, and patterns of organised corruption more comprehensively. This condition has implications for suboptimal evidence and the underutilisation of wiretapping due to a legal vacuum.

A similar situation was also found in the Asabri case (2021), in which the Attorney General's Office again handled corruption in investment with huge losses to the state. In law enforcement practices in many countries, communication between investment managers and market controllers is one of the main sources of evidence. However, in Indonesia, there are still doubts about the use of wiretapping as evidence and a lack of transparency regarding the procedures and methods of implementation. As a result, the effectiveness of prosecutions has declined and the potential for strengthening the element of intent (mens rea) has not been properly explored.

In the case of the Ministry of Communication and Information Technology's 4G BTS (2023), the characteristics of digital corruption actually require intrusive digital evidence techniques, including the use of wiretapping. The Attorney General's Office has presented evidence of communications that indicate illegal directives regarding the infrastructure project. However, public questions have arisen regarding the legal basis for wiretapping, the existence of court warrants, and the mechanism for securing and clarifying the chain of evidence. As a result, the legitimacy of wiretapping evidence has been questioned, giving defendants the opportunity to challenge the validity of such evidence in court.

Meanwhile, in the case of PT Timah Tbk's Tin Trading (2023–2024), the Attorney General's Office stated that wiretapping had helped unravel corrupt mining practices involving conglomerates and public officials. However, the legal basis for the wiretapping was never officially disclosed, giving rise to potential disputes over evidence during the trial. This led to the assumption that the Attorney General's Office had acted beyond its written normative authority, with the risk of the evidence being dismissed during the trial.

This series of normative analyses and case studies shows that wiretapping has become a factual instrument used by the Attorney General's Office in uncovering complex, systematic and covert corruption crimes. However, the use of this instrument has not been accompanied by an adequate legal and procedural framework, so that wiretapping has the potential to turn from a tool to strengthen evidence into a legal weak point in the prosecution process. This condition reveals a gap between the practical needs of law enforcement and the available regulatory design, which ultimately raises serious issues related to legal certainty, the validity of evidence, and the protection of citizens' constitutional rights.

Within the framework of Lawrence M. Friedman's theory of law enforcement, this condition reflects a disharmony between legal substance and legal structure, in which wiretapping authority is granted without clear authorisation and oversight mechanisms.[81] This imbalance not only weakens the effectiveness of law enforcement, but also has the potential to undermine the legitimacy of

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[79] Andi Hamzah, *Indonesian Criminal Procedure Law*, Sinar Grafika, Jakarta, 2019, pp. 217–218.

[80] Munir Fuady, *Theory of Criminal Evidence Law*, Kencana, Jakarta, 2021, pp. 102–104.

[81] Lawrence Meir Friedman, *The Legal System: A Social Science Perspective*, Russell Sage Foundation, New York, 1975, pp. 14–15.

the Attorney General's Office as a law enforcement agency that should operate within the framework of a democratic state governed by the rule of law.[82] Therefore, the legal implications of the Attorney General's Office exercising its wiretapping authority cannot be understood in isolation, but must be viewed holistically as a constitutional, procedural, and institutional issue.

Based on the analytical, theoretical, normative, comparative, and case studies discussed above, it can be understood that the implementation of wiretapping authority by the Attorney General's Office in handling corruption cases is still in a state of legal uncertainty. At a basic level, wiretapping authority is granted normatively through provisions in the Attorney General's Office Law and the Corruption Law, but it is not accompanied by clear technical regulations and authorisation, thus having serious implications in terms of legality, legitimacy, and procedural justice.

From the perspective of authority theory, wiretapping by the Attorney General's Office should have a clear basis of authority and not be merely delegative in nature. When the governing norms are still abstract and do not provide operational limitations, such actions are prone to being viewed as an abuse of power that contradicts the principle of detournement de pouvoir in state administrative law.[83] This is in line with the principle of the rule of law, which requires that all government actions be based on written laws with a clear structure.

From the perspective of Friedman's theory of law enforcement, weaknesses in the structure of the Attorney General's Office's wiretapping authority reflect a disharmony between legal substance that is not yet comprehensive and a legal structure that lacks strong wiretapping oversight mechanisms. The lack of synchronisation between these two elements creates systemic obstacles to the successful enforcement of criminal law against corruption.[84]

From the perspective of Rawls' theory of justice, wiretapping that does not go through measurable legal procedures not only has the potential to violate the rights of the accused, but also violates the principle of justice as fairness. Fair law enforcement requires that the investigation of corruption perpetrators not be carried out in a manner that undermines the legitimacy of law enforcement itself. Wiretapping without court authorisation is a form of action that violates the principle of procedural justice, even if it aims to achieve substantive justice.

From a human rights perspective, wiretapping without proper authorisation and oversight mechanisms has the potential to violate the rights to privacy and freedom of communication protected by the Constitution, the UDHR, and the ICCPR.[85] The state's obligation to respect and protect these rights is at stake when wiretapping is carried out without adequate legal controls. Inaccuracies in restricting rights can result in the state being deemed to have failed to fulfil its obligations under the international legal system.[86]

The legal implications of this situation are increasingly apparent in the prosecution of corruption cases. Wiretapping results that do not obtain clear procedural legitimacy have the potential to be declared invalid, excluded from evidence, challenged in pretrial proceedings, and result in the application of *the fruit of the poisonous tree* doctrine.[87]

The consequence is the failure of prosecution and the loss of the potential to convict perpetrators of corruption who should have been prosecuted based on the evidence of confidential communications that had been revealed. This situation is certainly detrimental to the state and society, as well as contrary to the goal of eradicating corruption, which requires effectiveness and legal certainty in order to maintain the integrity of state administration.[88]

A comparative analysis with ASEAN countries shows that the authority to conduct wiretapping by law enforcement agencies is governed by more detailed norms, is independent, and has a judicial authorisation mechanism. Oversight reinforced by judicial institutions or independent authorities has become a regional standard that optimises the effectiveness of corruption eradication without sacrificing the protection of human rights.

Meanwhile, the Attorney General's Office's wiretapping mechanism reflects a legal situation that tends to be *ad hoc* and unstructured, thereby potentially causing conflicts of authority between institutions and uncertainty in the management of digital evidence. This type of mechanism requires a robust regulatory overhaul so that the Attorney General's Office can carry out its wiretapping functions in a professional, controlled, and accountable manner.

Based on a comprehensive normative, theoretical, comparative, and practical analysis of law enforcement, it can be asserted that the exercise of wiretapping authority by the Attorney General's Office of the Republic of Indonesia has been recognised normatively, but legally does not yet meet the standards of a constitutional and procedural state governed by the rule of law. The recognition of

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[82] John Bordley Rawls, *A Theory of Justice*, Harvard University Press, Cambridge, 1971, pp. 90–92.

[83] Ridwan H.R., *State Administrative Law*, Rajawali Pers, Jakarta, 2018, pp. 112–113.

[84] Herlambang Perdana Wiratman, "Problems with the Regulation of Wiretapping Authority in the Indonesian Criminal Justice System", *Journal of Law & Development*, Vol. 52, No. 3, 2022, pp. 455–457.

[85] H. Christianto, "Wiretapping from the Perspective of Criminal Law and Human Rights", *ADIL Journal*, 2018, pp. 12–14.

[86] W. Djafar, *Personal Data Protection and Privacy Rights in Indonesia*, Hukumonline Learning Centre, 2022, pp. 8–9.

[87] H. Salim, "The Validity of Wiretapping in the Criminal Evidence System: The Exclusionary Rule Perspective," *ADIL Journal*, 2018, pp. 65–68.

[88] *Ibid*., pp. 66–67.

authority through Article 30C letter i of the Attorney General's Office Law has not been accompanied by detailed operational regulations regarding authorisation, procedures, duration, supervision, and management of wiretapping results as required by Constitutional Court Decision Number 5/PUU-VIII/2010. As a result, this authority is in a state of *legal uncertainty*, which has a direct impact on the legitimacy of wiretapping actions.

The first legal implication arises in the constitutional and human rights sphere, because wiretapping is a restriction on the right to privacy that can only be justified through clear, measurable, and testable legislation. When regulations are general and open to multiple interpretations, the risk *of abuse of power* and *arbitrary surveillance* increases, so that the state potentially fails to fulfil its obligation to respect and protect human rights. Second, in the realm of procedural law and evidence, wiretapping that is not supported by a valid authorisation mechanism has the potential to produce *unlawful evidence* and open up the application of the *fruit of the poisonous tree* doctrine, which could ultimately invalidate the chain of evidence in a corruption case in court. Paradoxically, this condition actually weakens the effectiveness of corruption eradication, which is highly dependent on electronic evidence.

Thirdly, in the realm of administrative authority and institutions, the absence of procedural standards encourages the Attorney General's Office to rely on other institutions that have more established wiretapping authority, such as the Corruption Eradication Commission (KPK) or the police. This dependence has implications for potential overlapping authority, coordination conflicts, uncertainty over control of wiretap results, and weak accountability and *chain of custody* for electronic evidence. Fourth, from the perspective of Lawrence M. Friedman's theory of law enforcement, the disharmony between the substance of the law and the legal structure in the regulation of wiretapping by the Attorney General's Office shows that the legal system has not been able to support the effective and fair exercise of this authority.

Thus, it can be concluded that the legal implications of the implementation of wiretapping authority by the Attorney General's Office of the Republic of Indonesia not only concern technical aspects of law enforcement but also touch on the core principles of the rule of law, namely legal certainty, procedural justice, protection of human rights, and legitimacy of power. As long as wiretapping authority is not regulated comprehensively and measurably, wiretapping will remain an instrument that is prone to legal disputes and has the potential to weaken the prosecution of corruption itself. Therefore, from a legal perspective, the Attorney General's current wiretapping authority raises more problematic implications than legal certainty, thus requiring systematic regulatory reform as a prerequisite for effective and fair law enforcement in corruption cases.

CONCLUSIONS

The legal implications of the implementation of wiretapping authority by the Attorney General's Office of the Republic of Indonesia are that the wiretapping authority as formulated in Article 30C letter i of Law Number 11 of 2021 concerning the Attorney General's Office does not meet the constitutional standards for the restriction of human rights as stipulated by the Constitutional Court. The fragmentation of wiretapping regulations in various sectoral laws, the absence of detailed procedural regulations, and the lack of a judicial authorisation and multi-layered oversight mechanism create legal uncertainty, vulnerability to *abuse* of power, and the risk of wiretapping results being deemed inadmissible as evidence in court. This situation directly impacts the legitimacy of law enforcement actions and has the potential to violate the right to privacy and the principle of fair trial in a state governed by the rule of law.

Normatively, legislators need to immediately draft a Special Law on Wiretapping (*lex specialis*) that explicitly stipulates that the Indonesian Attorney General's Office may only conduct wiretapping during the investigation of corruption cases, with judicial oversight in the form of a court warrant. This regulation must clearly stipulate the authorised subjects, the purpose of wiretapping, the time limit, the scope of communications that can be wiretapped, the procedures for using the results of wiretapping, and the mechanism for destroying data that is not relevant to the evidence, in order to guarantee legal certainty and the protection of the right to privacy.

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