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BALANCING TWO CONFLICTING PERSPECTIVES ON WIRETAPPING ACT: Rights to Privacy and Law Enforcement

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Abstract: The right to privacy is part of fundamental human rights in technological advances. It is outlined under Article 12 of the 1948 Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights. Substantially, the right to privacy prohibits personal data dissemination, including wiretapping, which is considered a violation of human rights. However, applicable laws permit wiretapping when it aims to discover criminal evidence in court. Indonesia authorizes this act under Corruption Eradication Commission Law, Telecommunications Law, Corruption Crime Act, Terrorism Eradication Law, and Psychotropic Law. Unfortunately, these laws have failed to provide a standard mechanism and procedures for conducting the wiretapping act. The substantial insufficiency has made Indonesia a low-ranked country's privacy rights protection index. This implies the government has failed in balancing the interest of privacy as individual rights and the state's interest in law enforcement. Therefore, this study aimed to examine human rights on privacy, the wiretapping act in law enforcement, and the effort to balance these two rights. It used a normative juridical approach with secondary data. The results showed that Indonesian law has shortcomings that may violate constitutional rights. Therefore, there is a need for a law that comprehensively regulates the mechanisms and detailed procedures for wiretapping.

Keywords: Human Rights, Law Enforcement, Wiretapping

Abstrak: Hak atas privasi merupakan bagian dari hak asasi manusia yang mendasar dalam kemajuan teknologi. Hal ini diuraikan dalam Pasal 12 Deklarasi Hak Asasi Manusia 1948 dan Pasal 17 Kovenan Internasional tentang Hak Sipil dan Politik. Secara substansial, hak privasi melarang penyebaran data pribadi, termasuk penyadapan, yang dianggap sebagai pelanggaran hak asasi manusia. Namun, undang-undang yang berlaku mengizinkan penyadapan jika bertujuan untuk menemukan bukti kriminal di pengadilan. Indonesia mengesahkan tindakan ini berdasarkan UU KPK, UU Telekomunikasi, UU Tindak Pidana Korupsi, UU Pemberantasan Terorisme, dan UU Psikotropika. Sayangnya, undang-undang ini gagal memberikan mekanisme dan prosedur standar untuk melakukan tindakan

penyadapan. Ketidakcukupan yang substansial telah menjadikan Indonesia sebagai negara dengan peringkat rendah dalam indeks perlindungan hak privasi. Ini berarti pemerintah telah gagal dalam menyeimbangkan kepentingan privasi sebagai hak individu dan kepentingan negara dalam penegakan hukum. Oleh karena itu, penelitian ini bertujuan untuk mengkaji hak asasi manusia atas privasi, tindakan penyadapan dalam penegakan hukum, dan upaya untuk menyeimbangkan kedua hak tersebut. Penelitian ini menggunakan pendekatan yuridis normatif dengan data sekunder. Hasil penelitian menunjukkan bahwa hukum Indonesia memiliki kekurangan yang dapat melanggar hak konstitusional. Oleh karena itu, diperlukan suatu undang-undang yang secara komprehensif mengatur mekanisme dan prosedur rinci penyadapan.

Kata Kunci: Hak Asasi Manusia, Penegakan Hukum, Penyadapan

Introduction

The privacy concept was first presented in the United States by Warren and Brandeis in 1890 as a right that needs protection. Since many rights are granted to citizens subject to government intervention, the right to privacy has become contentious. The right to privacy is the freedom from surveillance on personal matters and the right to protection from the acquisition, storage, and management of private information.[1] It is a fundamental human right due to the challenges of privacy violations resulting from technological advances.

The right to privacy is recognized as fundamental by the international legal treaty known as the Universal Declaration of Human Rights (UDHR). Article 12 of UDHR governs the protection of all rights, including the right to residential protection, correspondence, telephone, email, and other technological services. Paragraph (4) of the article outlines that information privacy shall protect against collecting and distributing private data and covers most regulations.[2] Furthermore, the International Covenant on Civil and Political Rights (ICCPR) regulates the right to privacy. The Covenant requires the government to implement national legislation to guarantee people's privacy rights from attacks by government institutions, legal organizations, or individuals.[3]

Indonesia ensures the rights to privacy of its citizens through Articles 28F and 28G paragraph (1) of the 1945 Constitution (*Undang-Undang Dasar Negara Republik Indonesia 1945)* concerning the rights for protection to a personal matter.[4] However, the article does not explicitly regulate privacy rights, but the term

1 Sinta Dewi, "Balancing Privacy Rights and Legal Enforcement: Indonesian Practices," *International Journal of Liability and Scientific Enquiry* 5, no. 3/4 (2012): 232, https://doi.org/10.1504/ijlse.2012.051961.

2 Susan Landau, "CALEA and Network Security: Security, Wiretapping, and the Internet," *IEEE Security & Privacy* 52, no. 11 (2005): 26–33, http://ieeexplore.ieee.org/document/1556533/.

3 Article 17 of ICCPR regulates: (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honor and reputation. and (2) Everyone has the right to the protection of the law against such interference or attacks.Sahat Maruli Tua Situmeang, "Penyalahgunaan Data Pribadi Sebagai Bentuk Kejahatan Sempurna Dalam Perspektif Hukum Siber," *Sasi* 27, no. 1 (2021): 38, https://doi.org/10.47268/sasi.v27i1.394.

4 Andi Muhammad Asrun, "Hak Asasi Manusia Dalam Kerangka Negara Hukum: Catatan Perjuangan Di Mahkamah Konstitusi," *Jurnal Cita Hukum* 4, no. 1 (2016): 133–54, https://doi.org/10.15408/jch.v4i1.3200.

"privacy" is adopted from Article 12 of UDHR.[5] The *Kamus Besar Bahasa Indonesia/KBBI* (Indonesia Dictionary) defines privacy as freedom or personal leeway.[6] The right to privacy is part of human rights because it must be guaranteed, fulfilled, promoted, and not violated by anyone, including the state. Furthermore, there is a need to enforce the protection of electronic-based information privacy due to technological advancements. This is due to the significant increase in consumer data theft and the proliferation of private information wiretapping for purposes other than law enforcement by political groups or illegal organizations. As a facilitator of citizens' needs, the state, must guarantee privacy protection, including against wiretapping. The regulations on wiretapping should not be considered a threat but protection of law enforcement and a tool to provide proper citizen security.[7]

Wiretapping potentially contributes to aggravating diplomatic relations between states. For instance, the wiretapping of Indonesian government officials' phone calls by the Australian Intelligence Agency imposed a sanction on the two countries' diplomatic relationship. Therefore, the act is not a crime harming a single party but a form of terrorism or a threat to national security.[8] Cross-border wiretapping is not explicitly regulated in international law. However, it violates Article 41 paragraphs (1) and (3) of the 1961 Vienna Convention regarding diplomatic relationships because it occurs outside diplomatic functions.[9] Wiretapping threatens citizens' privacy rights, as implied in many of the Indonesian legislations that legitimize the act of collecting evidence in a trial jurisdiction. Moreover, the justification for wiretapping is stated in Law No. 30 of 2002 concerning the Corruption Eradication Commission (UU *Komisi Pemberantasan Korupsi* (KPK)), Law No. 35 of 2009 concerning drugs, and other regulations support the act for law enforcement purposes.[10]

Article 28J of the 1945 Constitution of Republic Indonesia states that human rights specified by the Constitution may be limited to fulfill requests fairly or satisfy litigation, religious values, security, and social stability.[11] In Article 12 of the UU KPK, wiretapping is justified as an alternative investigation and crime discovery method. This means the act is legally authorized only when there is a law-enforcing motive for its justification.[12] However, there is a need for further studies on the underlying procedures that facilitate the person being wiretapped in understanding the perpetrators' rights and their justifications for

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5 Sunaryo Sunaryo, "Studi Komparatif Antara Universal Declaration of Human Rights 1948 Dan the Cairo Declaration on Human Rights in Islam 1990," *FIAT JUSTISIA:Jurnal Ilmu Hukum* 5, no. 2 (2014): 389–409, https://doi.org/10.25041/ fiatjustisia.v5no2.61.

6 H R Ridwan, *Hukum Administrasi Negara* (Jakarta: Raja Grafindo Persada, 2011).

7 Rizky Burnama et al., "Penyadapan Informasi Oleh Komisi Pemberantasan Korupsi (KPK) Terkait Hak Privasi Information Wired Recorded by the Corruption Eradication Commission Due to Privacy" 3, no. 2 (2019): 279–89.

8 Jawahir Thontowi, "Penyadapan Dalam Hukum Internasional Dan Implikasinya Terhadap Hubungan Diplomatik Indonesia Dengan Australia," *Jurnal Hukum IUS QUIA IUSTUM* 22, no. 2 (2016): 183–202.

9 Bayu Sujadmiko, *Dimensi Hukum Internasional*, ed. Heryandi, 2nd ed. (Bandar Lampung: Pusat Kajian Konstitusi dan Peraturan Perundang-undangan (PKKPUU) & Bagian Hukum Internasional Fakultas Hukum Universitas Lampung, 2014).

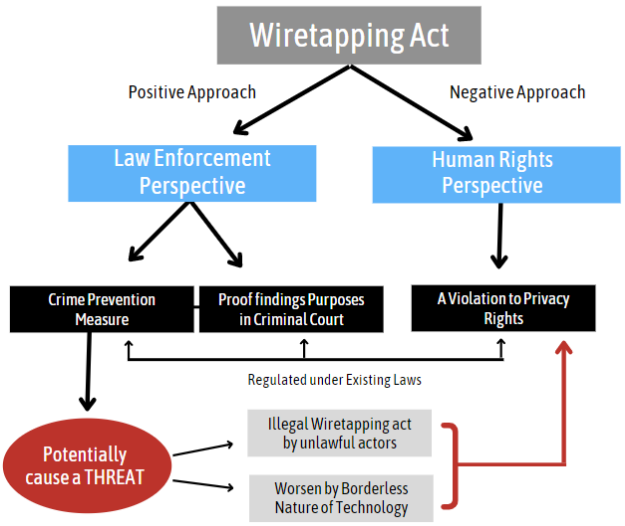
10 Diny luthfah, "Perlindungan Negara Terhadap Keamanan Nasional Indonesia Ditinjau Dari Hukum Internasional," *https://Trijurnal.Lemlit.Trisakti.Ac.Id* 4, no. 3 (2016): 329–47.

11 Ida Bagus Subrahmaniam Saitya, "Pengaturan Hak Asasi Manusia Di Indonesia," *Sintesa: Jurnal Ilmu Sosial Dan Ilmu Politik* 8 (2), no. September (2017): 78–82.

12 Damian Agata Yuvens, Rangga Sujud Widigda, and Aisyah Sharifa, "Dilema Upaya Hukum Terhadap Penyadapan," *Jurnal Hukum & Pembangunan* 47, no. 3 (2018): 289, https://doi.org/10.21143/.vol47.no3.1578.

wiretapping. The action must be conducted when their key roles must follow the sovereign power in wiretapping in balancing privacy as a human right and law enforcement.[13] The dilemma between the interests of these two perspectives is illustrated as follows:

Chart 1. Wiretapping Act Based on Two Conflicting Perspectives



Wiretapping has the potential to endanger an individual's private rights. Although the act is lawful under certain conditions, limitless technology-based wiretapping might cause national security menaces similar to terrorism.[14] This necessitates revising the legislation to guarantee that wiretapping does not interfere with the freedom of human rights and private information, with possible long-term negative consequences.[15] Therefore, this study aimed to examine human rights on privacy, wiretapping in law enforcement, and balancing these two rights. It used a normative juridical approach and secondary data from library research supported by primary data. This normative juridical approach examines the legislation on human rights, protection of national security, and law enforcement.

Result and Discussion

The Standpoint of Privacy Rights as Fundamental Right According to Human Rights Legal Frameworks

One human right that information-based technologies may jeopardize is the right to privacy. The disruption is triggered by the broad and varied internet use formed by technological breakthroughs and advances. Utilizing technological and scientific developments occasionally requires inputting personal data with private information that requires protection. The means to protect is consistent with privacy, defined as the "*right to protection from information disclosure, limit access to the self, or control over information about oneself.*" Therefore, respecting people's privacy requires allowing them to decide which information they want to disclose and which should not.[16]

Indonesia's post-constitution amendment recognizes the right to privacy as a citizen's constitutional right that must be protected. Article 28G paragraph (1) of the 1945 Constitution (UUD 1945) states that everybody is entitled to the protection of the private self (privacy), family, honor, dignity, and belongings, including private data. This is supported by Article 32 Law No. 39 the Year 1999 concerning Human Rights, which regulates the inde-

[13] Jawahir Thontowi and Pranoto Iskandar, *Hukum Internasional Kontemporer* (Bandung: PT Refika Aditama, 2006).

[14] Hwian Christianto, "Tindakan Penyadapan Ditinjau Dari Perspektif Hukum Pidana," *Prioris Journal* 5, no. 2 (2016): 89–106.

[15] Silvi Habsari Sumariyastuti, "PENYADAPAN DALAM PERSPEKTIF HAK ASASI MANUSIA," Yurispuden 2, no. 2 (2019): 135–153.

[16] Anjas Putra Pramudito, "Kedudukan Dan Perlindungan Hak Atas Privasi Di Indonesia," *Jurist-Diction* 3, no. 4 (2020): 1397, https://doi.org/10.20473/jd.v3i4.20212.

pendence and communication secrecy through electronic means. The independence should not be disturbed except by the order of the judge or other constitutionally legitimate authority.[17]

Article 26 paragraph (1) of Law No. 19 of 2016 amending Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law) regulates privacy rights. It states that all acts towards someone's private data shall be conducted with the data owner's consent. Furthermore, ITE law governs prohibitions linked to electronic-based information considered not private under Articles 27 through 37. These articles restrict unlawful and purposeful misuse of electronic-based information that may harm the retrieved data's owner.[18]

The right to privacy is specified in the Declaration of Human Rights or UDHR 1948. The declaration requires member states to protect and respect the right to self of their citizens. Moreover, Article 12 regulates a broad range of protection over the right to self. This article pioneered the emergence of the regulations regarding the protection of privacy rights, such as the International Covenant on Civil and Political Rights (ICCPR). In this case, ICCPR regulates privacy rights protection in Article 17 paragraph (1).[19] It emphasizes that nobody should be treated arbitrarily or illegitimately regarding personal affairs, family, house, or correspondence. This convention further authorizes nations to establish law instruments for national protection. Therefore, this must be implemented by all nations that have ratified and signed this convention.[20]

The right to privacy as a human right is a fundamental principle embedded into every individual and recognized worldwide. Its recognition as a human right has essential meanings and significant human values. Moreover, the right increases tolerance, independence, and autonomy for control and to earn appropriateness. It obliterates discriminative treatment and restricts government authority. Subsequently, the guarantee of rights to privacy limits and prevents threats originating from technological advances.[21]

Wiretapping Act as a Law Enforcement Effort

a. Wiretapping Act: History and Definition

Efforts to obtain confidential information from another person, party, or organization for personal gain have evolved from time immemorial. Historically, wiretapping was conducted manually to seek information discreetly by relying on physical abilities. In its development, technological-based devices have made the act easier by elevating the effectiveness and efficiency of information retrieval.[22]

Wiretapping is a crime related to societal and humanitarian problems because it has the

[17] "Merumuskan Kebijakan Penata-Kelolaan Internet Berbasis Hak – Referensi HAM," n.d.

[18] Sekaring Ayumeida Kusnadi And Andy Usmina Wijaya, "Perlindungan Hukum Data Pribadi Sebagai Hak Privasi," *Al Wasath Jurnal Ilmu Hukum* 2, No. 1 (April 2021): 9–16, Https://Doi.Org/10.47776/ ALWASATH.V2I1.127.

[19] Agus Suntoro, "Penerapan Asas Dan Norma Hak Asasi Manusia dalam Undang-Undang Pemberantasan Tindak Pidana Terorisme (The Application of Human Rights Principles and Norm in the Law on Combating Criminal Acts of Terrorism)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 11, no. 1 (2020): 63–81, https://doi.org/10.22212/jnh.v11i1.1371.

[20] Rudi Natamiharja and M H Stefany Mindoria, "Perlindungan Data Privasi Dalam Konstitusi Negara Anggota ASEAN," n.d.

[21] Hanifan Niffari, "PERLINDUNGAN DATA PRIBADI SEBAGAI BAGIAN DARI HAK ASASI MANUSIA ATAS PERLINDUNGAN DIRI PRIBADI Suatu Tinjauan Komparatif Dengan Peraturan Perundang-Undangan Di Negara Lain," *Jurnal Hukum Dan Bisnis (Selisik)* 6, no. 1 (2020): 1–14, https://doi.org/10.35814/selisik.v6i1.1699.

[22] Raissa Anita Fitria, "Penyadapan Sebagai Alat Bukti Dalam Tindak Pidana Umum Berdasarkan Hukum Acara Pidana," *Mimbar Keadilan*, 2017, 160, https://doi.org/10.30996/mk.v0i0.2192.

potential to violate or abolish the right to privacy of a group or person. It is a major infringement of privacy because it intercepts sensitive or confidential information.[23]

b. The Legal Basis for Permissible Wiretapping

Formulated by the national and international legal framework concerning human rights, wiretapping is prohibited by several regulations, including:

1) Article 12 of the Universal Declaration of Human Rights 1948.
2) Article 17 of the International Covenant on Civil and Political Rights.
3) Article 8 of the European Convention on Human Rights.
4) Article II of the American Convention on Human Rights.

These four international laws state that the right to free information, communication, or correspondence is a part of basic human rights. As part of the right to information and communication, the right to freedom of information allows people to interact, develop, and participate in society. Cutting these rights is highly prohibited because it violates other people's human rights. The evolution of rights and freedom of information reasoning in international law is expected to be accompanied by paradoxes. Illegal wiretapping is strictly regulated in Article 3 of the Convention on Cybercrime held in Budapest on 23 November 2001. Therefore, protection against wiretapping is in the context of law enforcement and the act committed by an individual.[24]

Wiretapping is an effective investigation method for solving extraordinary crimes. Although the act is prohibited by international law, there are exceptions to its prohibition in international criminal law. Wiretapping is applied in solving core or transnational organized and extraordinary crimes such as corruption, human trafficking, money laundering, drug trade, and arms smuggling.[25]

Indonesia and other states worldwide are performing wiretapping measures to find criminal evidence and prevent crime. However, all countries agree that this conduct must be regulated strictly to ensure such tapping does not cause further threats. For instance, in the mid-90s, the Netherlands limited wiretapping to be performed only for legal reasons and affairs related to national security.[26] Several countries may use national security as a basic interest to use wiretapping in enforcing the law and establishing economic stability. Additionally, the limiting provisions by national apparatus worldwide have developed. Wiretapping is only permissible under special conditions and preconditions as follows:[27]

1) A constitutionally legitimate official authority permits the act with a clear and objective purpose.
2) Executed within the scheduled time frame.
3) Limitations are set regarding handling the wiretapping data.

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[23] Vicky F Jusuf, Virginia Agnes Theresi, Frans Maramis Taroreh, "Kajian Yuridis Tindak Pidana Intersepsi (Penyadapan) dalam Hukum Teknologi Informasi dan Komunikasi di Indonesia," *Lex Crimen* 9, no. 3 (2020): 82–92.

[24] Jusuf, Virginia Agnes Theresi, Frans Maramis Taroreh.

[25] Jawahir Thonthowi, "Penyadapan Dalam Hukum Internasional dan Implikasinya terhadap Penegakan Hukum Kejahatan Luar Biasa," Makalah Studium General (Surabaya, 2014).

[26] Fitria, "Penyadapan sebagai Alat Bukti dalam Tindak Pidana Umum Berdasarkan Hukum Acara Pidana."

[27] Hardy Salim, Monika Kurnia, and Nada Dwi Azhari, "Analisis Keabsahan Penyadapan Yang Dilakukan Oleh Komisi Pemberantasan Korupsi Tanpa Izin Pengadilan," *ADIL: Jurnal Hukum* 9, no. 2 (2019): 80, https://doi.org/10.33476/ajl.v9i2.830.

4) Limitations are set regarding the persons allowed access to wiretapping.

The legality of the wiretapping method has not been thoroughly defined in Indonesian law. The regulation is insufficiently mentioned in the Draft of Criminal Procedure Code in Articles 302 to 305 of the RKUHP. Furthermore, the Constitutional Court Decision Number 5/PUU-VIII/2010, which examines Article 31 paragraph (4) of the ITE Law, mentions the procedure for wiretapping based on law enforcement. This is in line with the Minister of Communication and Information Regulation Number 11/PER/M.KOMINFO/02/2006 concerning Technical Wiretapping on Information. The regulation was previously the basis for the Corruption Eradication Commission's implementation of wiretapping.[28] Although wiretapping is prohibited due to privacy violations, it could be useful in protecting lawful interests contributing to law enforcement.[29] Table 1 shows the wiretapping regulations applied in Indonesia.

Table 1. The Legal Basis for Granting Authority for Wiretapping Efforts

No	Law	Article	Wiretapping Limitations	Wiretapping Timeframe	Authorized Official
1	Law No 5 the Year 1997 concerning Psychotropics	Article 55 letter d	Granting authority to wiretap conversations via phone or other electronic communication devices of a person suspected or heavily suspected to be talking about the crime of psychotropics.	The maximum duration of 30 days.	Police investigator
2	Law No 31 the Year 1999 concerning eradicating the crime of corruption.	Explanation of Article 26	In the investigation process, the authorized official may conduct wiretapping of the perpetrator.	Not set	Police investigator
3	Law No 30 the Year 2002 concerning telecommunication	Article 43 paragraph (2)	Granting authority to ask for phone records to the service provider for investigation purposes	Not set	Attorney General, Head of Police, and Case Investigator
4	Law No 30 the Year 2002 concerning KPK (Corruption Eradication Commission)	Article 12 paragraph (1) letter a	Granting authority for KPK to conduct wiretapping and record conversations	Not set	KPK Official
5	Law No 15 the Year 2003 concerning the eradication of the crime of terrorism	Article 31	In the investigation process, the authorized official is allowed to wiretap the perpetrator and confiscate correspondence.	The maximum duration of 1 year.	Investigator
6	Law No 21 the Year 2007 on The Crime of Human Trafficking	Article 31	Granting authority to the investigator to wiretap communication devices	The maximum duration of 1 year.	Investigator under written permit by the chief justice.
7	Law No 35 the Year 2009 concerning Narcotics	Article 75 and Article 77	Granting Authority to BNN (National Narcotics Agency) investigator to wiretap the perpetrator's telecommunication device.	The maximum duration of 3 months and may be extended once for the same duration.	BNN Investigator
8	Law No 17 the Year 2011 concerning National Intelligence	Article 31	Granting authority to conduct wiretapping on a target suspected to threaten national security, terrorism, espionage, and sabotage that threatens national sovereignty. Wiretapping may only be done after receiving preliminary evidence deemed sufficient by the Chief Justice.	The maximum duration of 6 months and may be extended according to requirements	BIN (*Badan Intelijen Negara)* (National Intelligence Agency) by order of the head of BIN
9	Law No 18 the Year 2011 concerning Amendments towards Judicial Commission Law	Article 20 paragraph (3)	Granting authority to the Judicial Commission to request assistance from law enforcement to wiretap on suspicions of ethical code violations by a Judge.	Not set	Law enforcement (*Unclear/absurd)*

Table 1 shows that each government agency that justifies wiretapping regulates the act under different mechanisms, limitations, and timeframes. The disparity of their methods in wiretapping is harmful and threatens individuals' rights to privacy. The Constitutional Court Decision Number 5/PUU-VIII/2010 suggests that wiretapping contains the principle of *velox et exactus*. This denotes that derived information via wiretapping should be exact and latest. When wiretapping is necessary, it must be lawful not to infringe on individuals' privacy rights arbitrarily. Therefore, government agencies urge the Constitutional Court to establish sufficient regulations governing wiretapping in general and for each

[28] Tamara Laurencia, "Penyadapan Oleh KPK Dalam Perspektif Due Process of Law," *JURNAL MERCATORIA* 12, no. 2 (December 2019): 122–38, https://doi.org/10.31289/mercatoria.v12i2.2790.

[29] Edmon Makarim, "Analisis Terhadap Kontroversi Rancangan Peraturan Pemerintah Tentang Tata Cara Intersepsi Yang Sesuai Hukum (Lawful Interception)," Jumai Hukum Dan Pembangunan 40, no. 2 (2010): 219–50.

agency. This is because there are no synchronous regulations regarding wiretapping, hence potentially harming people's constitutional rights.[30]

c. Two Perspectives of Wiretapping: The Rights of Privacy and Its Function as A Law Enforcement Instrument

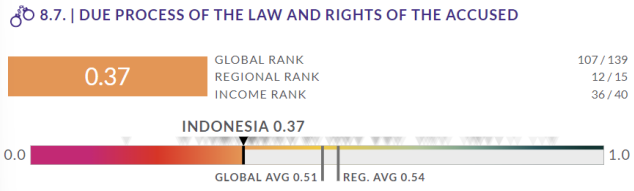
Indonesia is undergoing a crisis of rights to privacy protection that indicates the weakness in protecting citizens' fundamental rights.[31] The National Cyber and Crypto Agency reported 2,549 cases of information theft with malicious intent and 79,439 accounts burglarized throughout 2020.[32] Wiretapping is one of the many *modus operandi* implemented by perpetrators to steal private data from their victims. The many privacy violation cases in Indonesia indicate that protecting privacy rights is still minimal. There is a need for more concern regarding fulfilling the rights of privacy as one of the human rights. According to data compiled by the World Justice Project (WJP), Indonesia ranks 88 out of 139 countries indexed under factor 4: Fulfillment of Fundamental Rights. The rank dropped one level compared to the previous year, while the country's indexation score is only 0.52 compared to the 0.56 global average. Indonesia's regional score of 0.60, as shown in Figure 1, indicates the poor fulfillment of fundamental rights.[33] It has a score of 0.50 regarding the fulfillment of the Right to Life and Security of a person. This is far behind neighboring countries such as Singapore, with a score of 0.67, above the global average.

Figure 1. Fulfillment Index of Indonesia's Factor 4: Fundamental Rights

Source: https://worldjusticeproject.org/rule-of-law-index/country/2021/Indonesia/Fundamental%20Rights/

Indonesia only scored 0.38 in the criminal justice factor indexation, ranking 90, below several African countries. The Indicator 8.7 Due Process of the Law and Rights of the Accused is directly relevant. It measures the fulfillment of a perpetrator's rights, including the right to privacy in court. Indonesia only scores 0.37 on this indicator, far behind the 0.54 global average, as illustrated in Figure 2.

Figure 2. Fulfillment Index of Due Process of the Law and Rights of the Accused



Sources: https://worldjusticeproject.org/rule-of-law-index/country/2021/Indonesia/Criminal%20Justice

The Rule of Law Indexation by WJP shows an urgency for Indonesia to remodel its strategies to fulfill its citizen's rights to privacy more effectively. The indexation also shows that wiretapping by legal proceedings on a perpetrator does not guarantee their rights of priva-

[30] Supriyadi Widodo Eddyono dan Erasmus A. T. Napitupulu, Komentar Atas Pengaturan Penyadapan Dalam Rancangan KUHAP (Jakarta: Institute for Criminal Justice Reform, 2013), 4.

[31] "Parlementaria Terkini - Dewan Perwakilan Rakyat," n.d.

[32] Moh Hamzah Hisbulloh, "Urgensi Rancangan Undang-Undang (RUU) Perlindungan Data Pribadi," *Jurnal Hukum* 37, no. 2 (2021): 119, https://doi.org/10.26532/jh.v37i2.16272.

[33] "WJP: Indeks Negara Hukum RI 2021 Turun, Peringkat 68 Dari 139 Negara," n.d.

cy. Therefore, Indonesia could gradually increase its indexation score by enforcing the right to privacy.

Several provisions consider wiretapping efforts beneficial in investigation processes. Examples include those listed in the Law of Electronic Information and Transactions (ITE Law), the Law of Narcotics, and the Law of Corruption Eradication Commission (KPK Law). However, these provisions do not indicate the warrant, limitations, and authorized officials in wiretapping, creating room for violating constitutional and private rights. This necessitates a law to regulate wiretapping because government laws alone cannot limit human rights.[34]

Balancing Rights of Privacy and Law Enforcement in the Act of Wiretapping

The Rights to Privacy are derogable, and their limitation should be based on laws and regulations. However, the fulfillment of a people's right to privacy is at a minimum level. The provisions justifying wiretapping are insufficient and negligent of the target's right to privacy.[35] This shows the government's failure to balance individual interests over rights to privacy and national interests for law enforcement. The problems in the law as a basis for wiretapping include:

1) Several law provisions do not provide the wiretapping timeframe.
2) The absence of a detailed mechanism regarding the wiretapping procedure.
3) The absence of an agency to supervise wiretapping efforts by authorized officials.
4) Each institution has different authorized officials to perform wiretapping.
5) The absence of standard provisions on the extent of wiretapping.
6) The absence of provisions regarding compensations towards targets whose private information is over-exposed.

The shortcomings show that Indonesia needs to form new, more comprehensive regulations useful as a guide for wiretapping across all agencies. Balancing the two interests could be difficult when future regulations do not adopt the weaknesses.

a. Strategic Efforts in Balancing Fundamental Rights to Privacy and Law Enforcement in the Act of Wiretapping: Adopting Ideal Mechanisms from Developed Countries

It is possible to balance individual rights to privacy and national interests for law enforcement. Countries with a high law enforcement index have proven that the two could run simultaneously. For instance, the United Kingdom scored 0.78 out of 1.00 and ranked 16th out of 139 countries. Through the Regulation of Investigatory Powers Acts 2000 regarding wiretapping procedures, the UK provided detailed mechanisms regarding wiretapping procedures. The regulation contains five parts regulating the following:[36]

1) Section 1: Communication

The first section provides the basis for legal and illegal wiretapping using the term *interception*. It also regulates the permit to conduct wiretapping, limitations of authority, cost, restrictions of tapping instrumentations, and penalties for violating the provisions. Furthermore, the advanced section regulates the procedures of obtaining and disclosing communication data, the authorities authorized to extract and disclose data, the

[34] Sumariyastuti, "Penyadapan Dalam Perspektif Hak Asasi Manusia."

[35] A. Rachmad, "Legalitas Penyadapan Dalam Proses Peradilan Pidana Di Indonesia," *Jurnal Hukum Samudra Keadilan* 11, no. 2 (2016): 239–49.

[36] "Regulation of Investigatory Powers Act 2000," accessed 20 February 2022, https://www.legislation.gov.uk/ukpga/2000/23/contents.

wiretapping timeframe, and court approval procedures.[37]

2) **Section 2: Supervision Agency and Secret Source of Intelligence**
   The second section authorizes a supervision agency or a relevant collaborative unit to protect children and adults vulnerable to wiretapping. It also highlights the authorities' responsibilities and limitations and the procedure regarding the information that may be disclosed. Additionally, this section outlines the procedure of discontinuing or canceling authorities authorized for the wiretapping.
3) **Section 3: Encrypted electronic data investigation**
   The third section of the Act regulates the authority procedures to request data disclosure, including sending a notice to force disclosure and the key wiretapping objectives. It provides general transparency to the wiretapping target by notification. This is based on the hope that the target would submit to the laws in effect. Also, this section contains the penalty and fine in case the target does not comply with the authorities.
4) **Section 4: Investigation**
   The fourth section regulates the specific limitations of investigators' authorities, the intelligence agency's main function functions, and the delegation of investigatory tasks to an equivalent agency. It also contains the code of practice regarding the wiretapping procedures for authorities to ensure the efforts do not exceed the provisions.
5) **Section 5: Miscellaneous**
   The last section of the Act regulates the provision of warrants by the Intelligence Agency, routine surveillance operations, change, revocation, regulation interpretation, and criminal responsibilities.

The most concrete provision regulated by the Act is the existence of affidavits. These are written oaths, where investigators tell judges that they would acquire personal data without violating the owner's secrecy and only disclose what is necessary for the court. In this situation, all recordings gathered by the investigator are revealed only before court, while the appropriate recordings are separated from the improper and irrelevant recordings. Furthermore, leakage of private data disclosure by the investigator intentionally to the media is a criminal act that could result in imprisonment.[38]

Other best practices from Japan may be adopted, such as the wiretapping mechanism that should only be conducted for criminal investigation purposes. Wiretapping is only performed when the state court issues a warrant of such action.[39] Furthermore, wiretapping has been conducted using specific tapping equipment following the revision of Japan's Act on Wiretapping in 2016. Indonesia lacks regulations limiting the tools or devices used in wiretapping. This adds other shortcomings to the existing weaknesses of Indonesia's wiretapping regulation.[40] Japanese regulations stipulate that wiretapping actions must be supervised to ensure that the information retrieved is not excessive and is relevant to the needs of the inquiry.

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[37] Simon Hale-Ross, "The Investigatory Powers Act 2016 : The Human Rights Conformist," *Terrorism and State Surveillance of Communications*, 17 May 2019, 65–94, https://doi.org/10.4324/9780429399046-5.

[38] "Regulating Informers: The Regulation of Investigatory Powers Act, Covert Policing and Human Rights," *Informers*, 11 January 2013, 176–87, https://doi.org/10.4324/9781843924579-19.

[39] Taro Komukai, "Data Protection in the Internet: Japanese National Report," 2020, 253–69, https://doi.org/10.1007/978-3-030-28049-9_10.

[40] The Japan Times, "Police Can Use Wiretapping Devices to Decrypt and Record at Prefectural HQs across Japan from June," 2020, https://www. japantimes.co.jp/news/2019/04/25/national/crime-legal/police-can-use-wiretapping-devices-decrypt-record-prefectural-hqs-across-japan-june/.

Wiretapping as a human rights limitation by the law is analogous to a knife that should be used wisely. It should be used correctly by fulfilling the provided requirements, benefiting society by revealing the crime cases deemed difficult to prove. When performed wrongly without fulfilling the provided requirements, wiretapping could cause harm, resulting in the arbitrary use of the authority that violates human rights. Indonesia could balance the two interests in question by adopting provisions in the UK or Japan. Reforming legislation and establishing a Supervising Agency could be the key to fulfilling the citizen's rights to privacy in wiretapping.

Conclusion

As the main instruments of human rights enforcement, UDHR and ICCPR have explicitly regulated rights to privacy as a derogable fundamental right. Therefore, this right could be limited based on laws and regulations. Although wiretapping violates an individual's rights to privacy, it could be justified when carried out lawfully. This justification is regulated in the 1945 Constitution of the Republic of Indonesia. It is stated in Article 28J as a basis for reducing rights to fulfill requests fairly or satisfy litigation, religious values, security, and social stability. Therefore, Indonesia has established several provisions as the basis for wiretapping permission, though the laws have shortcomings that may violate constitutional rights. This implies there is urgency to establish a law that comprehensively regulates the wiretapping mechanisms and procedures. Improving legislation and forming a supervisory agency may be the key to fulfilling the citizen's rights to privacy in wiretapping efforts.

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