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Criminal Law Politics Against Corruption Criminal Acts Through Hand-Catching Operation

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Abstract *As a system, the law will run well when the system is connected and works actively. The practice of corruption in Indonesia is increasingly sophisticated, systematic and widespread in all levels of society which has an impact on the amount of state financial losses. Various laws and regulations that have been attempted to eradicate corruption are Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, and the Government has even ratified several articles of the United Nations Convention Against Corruption (UNCAC) in 2003 through Law Number 7 of 2006. However, until now it has not been able and effective to be enforced in eradicating corruption. The Corruption Eradication Commission (KPK) has a system to deal with corruption cases, namely the Hand Catch Operation (OTT), in carrying out hand catch operations there are two techniques used by the KPK, namely wiretapping and entrapment, however entrapment is not regulated in any corruption law in Indonesia. The type of research applied is normative legal research with a normative juridical approach, namely research conducted based on library materials (literature) which are secondary data. Based on the results of the study, it can be stated that in the criminal law policy in overcoming corruption based on penal and non-penal policies , it is no longer effective in eradicating corruption that is detrimental to the country's finances and economy and the KPK policy which is included in one of its policies is conducting a Hand-Catching Operation, namely wiretapping. Wiretapping is an activity of listening, recording, diverting, changing, inhibiting and recording the transmission of electronic information or electronic documents, either using a communication cable network or a wireless network, such as electromagnetic or radio frequency emissions, including checking packages, posts, correspondence, and other documents. In addition, the legal policy of overcoming corruption through Hand-Catching Operations, among others, the lack of regulations on wiretapping and entrapment carried out by the KPK is vulnerable to violations of Human Rights (HAM), especially regarding entrapment, because entrapment is not recognized by law or in corruption in Indonesia.*

Keywords: *Criminal Law Politics, OTT, KPK.*

1. INTRODUCTION

Legal policy can be simply formulated as a legal policy *that* will or has also included an understanding of how legal policy influences the law by looking at the configuration of power behind it and the formal understanding of politics only includes one stage, namely pouring out government policy in the form of a legal product. called *Legislative Drafting, Legal Executing and Legal Review*. One of the biggest criminal acts in Indonesia is corruption. The crime of corruption (tipikor) has been regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 (Tipikor Law).

In terms of legal norms, various laws and regulations as a means of eradicating corruption are sufficient, including Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, and Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which has been amended by the Corruption Law, Law Number 30 of 2002 concerning the Corruption Eradication Commission with the Sting Operation (OTT) system, Presidential Instruction Number 5 of 2004 concerning the Acceleration of Corruption

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Eradication, and Presidential Decree Number 11 of 2005 concerning the Corruption Eradication Coordination Team.

Based on Article 43 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, it is implied that an independent institution known as the Corruption Eradication Commission (KPK) will be established within a period of 2 years since the law came into effect. This is in accordance with the provisions of MPR Decree Number VII of 2001 which provides policy direction for the acceleration and effectiveness of the implementation of corruption prevention in Indonesia.

Regarding the broad authority of the Corruption Eradication Commission (KPK) granted by law, this study cannot possibly cover all of these authorities. Therefore, in accordance with the background, this study will focus on policies and implementation and supervision in the field of law enforcement. The KPK in conducting Hand Catch Operations (OTT) has two techniques that have legal weaknesses, namely wiretapping and entrapment. Wiretapping is only regulated generally in Law Number 30 of 2002, while entrapment is not recognized in various regulations on corruption in Indonesia. As a result, in its use, these two techniques often give rise to the opinion that the KPK is violating the law and Human Rights (HAM).

The ambiguity regarding the mechanism and limitations of the authority to wiretap carried out by the Corruption Eradication Commission (KPK) has given rise to the public assumption that the authority to wiretap carried out by the Corruption Eradication Commission (KPK) has violated the law and even violated Human Rights (HAM), namely violating a person's right to privacy. Based on the background above, the researcher formulated several problems, namely; 1). How is the Criminal Law Policy Against Corruption Through Sting Operations, 2). How is the Implementation of Sting Operations carried out by Investigators and 3). What are the Criminal Law Consequences Against Corruption Through Sting Operations?

2. THEORETICAL REVIEW

Politics is power, government or state administration. (Ida, 2018) Politics referred to in this study is official politics or policies regarding laws that will be enforced, either by making new laws or by changing old laws in order to achieve state goals.

Law is a mandatory regulation that is made to protect the interests of people in society. (Umar Said, 2013) The law referred to in this study is the law that is currently in force, namely criminal law is an integral part of law enforcement policy, actually covering a fairly broad problem, namely "including an evaluation of the substance of criminal law that is currently in

force, in order to renew the substance of criminal law in the future in order to combat crime". (Barda, 2010)

Criminal Acts are acts that are prohibited by law and are subject to criminal penalties, where the definition of acts here includes acts that are active (doing something that is actually prohibited by law) and also acts that are passive (not doing something that is actually required by law). (Teguh, 2010). The criminal acts referred to in this study are acts committed by someone who has authority in his position.

Corruption is a criminal act that enriches oneself directly or indirectly which can harm state finances or the state economy. (JCT, Simorangkir, 2010) .

Based on Article 2 and 3 of Law Number 31 of 1999, corruption is an unlawful act committed to enrich oneself, others, or a corporation that can harm state finances or the state economy. (Adami, 2017).

Corruption referred to in this study is an act carried out by state officials because they have authority with the intention of enriching themselves and harming state finances.

Based on Article 1 point 19 of the Criminal Procedure Code, a sting operation (OTT) is the arrest of a person while committing a crime, immediately after the crime has been committed.

3. METHOD

Research methods are the methods used by researchers in designing, implementing, processing data, and drawing conclusions regarding certain research problems (Sukmadinata, 2012). The type of research used is normative research. Normative legal research is also called doctrinal legal research, where law is conceptualized as what is written in laws and regulations (*law in books),* and research on legal systematics can be carried out on certain laws and regulations or written laws, so according to the research needs, the data obtained in this study is obtained from secondary data, so the data collection tool in this study uses document studies or through literature searches. While the normative legal research approach is the approach taken by the author in seeking the truth by looking at the principles contained in various laws and regulations (Bambang, 2013). The approach method used to conduct normative research is research in the form of an inventory of applicable legislation, in the form of searching for principles or philosophical bases of legislation or research in the form of efforts to discover laws that are appropriate to a particular case.

The data source used in this study is using primary data, primary data is data obtained from literature studies and tracing literature related to problems that are adjusted to the main

problems in this study. The type of secondary data in this study consists of primary legal materials obtained in document studies, secondary legal materials, tertiary legal materials, which are obtained through literature studies.

In this study there are three legal materials, namely: 1). ***Primary Legal Material*** , namely material that has a generally binding law or has binding force for interested parties consisting of legislation and other regulations related to the problem. 2). ***Secondary Legal Material*** , namely legal material obtained by tracing various regulations under the Law, namely in the form of legal science literature and concepts related to the problems discussed in this study, namely the Criminal Procedure Code, Article 1 point 19 of the Criminal Procedure Code, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, the definition of Criminal Acts of Corruption is contained in Chapter II concerning Criminal Acts of Corruption Articles 2 to 20, and Chapter III concerning Other Criminal Acts related to Criminal Acts of Corruption Articles 21 to 24. 3). ***Tertiary Legal Materials*** are materials that are given instructions or explanations for primary legal materials and secondary legal materials using a legal dictionary and using the Indonesian dictionary and *website.* The data analysis used in the study is descriptive analysis where the data obtained from the literature study will then be analyzed qualitatively which will be described descriptively. Based on this thinking, the qualitative method used in this study aims to interpret qualitatively. Then describe it completely and detail certain aspects, reveal the truth and understand the truth.

4. RESULTS AND DISCUSSION

Criminal Law Policy Against Corruption Crimes Through Sting Operations (OTT).

Legal Politics, as stated by Mahfud MD (2009), is *"Legal Policy"* or official policy lines on laws that will be enforced, either by making new laws or by replacing old laws, in order to achieve state goals. The Indonesian nation greatly hopes for the function or role of law in realizing a clean state administration free from corruption, collusion, and nepotism (hereinafter referred to as corruption), almost in all development sectors, even in the joints of daily life, society has been involved in corruption. Therefore, the law must appear at the forefront as a powerful means, as well as showing the direction for efforts to eradicate corruption.

Various laws and regulations governing aspects of corruption eradication have been established. Therefore, only with a consistent commitment and implemented consistently, efforts to eradicate corruption can be carried out in an orderly and regular manner so that a just

and prosperous society can be achieved. In facing the challenges of change, especially in eradicating corruption, Romli Atmasasmita stated that law is not enough with just a norm system as stated by Mochtar Kusumaatmadja, and a Behavior System as stated by Satjipto Rahardjo, but also needs to integrate the Value System of society. The Value System is sourced from Pancasila as the soul of the nation, hereinafter referred to as Integrative Legal Theory.

The integrative legal theory view can unite norms, behaviors, and values of efficiency, maximization, and balance in a single perspective and assessment of the success and failure of corruption eradication in Indonesia. The view from the other side, as described above, must remain in line with the values of Pancasila as stated in the preamble to the 1945 Constitution. The macro approach to corruption eradication encouraged changes to Law Number 31 of 1999, which was then amended by Law Number 20 of 2001. Even though there were changes, these changes had not completely shifted from a retributive approach to a macro approach.

The differences in concept, scope, approach, and objectives of eradicating corruption as described illustrate the development of legal political views in eradicating corruption. The change in view reflects that corruption eradication can no longer be understood more comprehensively covering social and economic aspects. Based on this understanding, the section considering (a) Law Number 20 of 2001 Amendment to Law Number 31 of 1999 emphasizes that "corruption is a violation of the economic and social rights of the people." This consideration is in accordance with the existence of Article 2 and Article 3 of Law Number 31 of 1999 which emphasizes that the element of state or state economic losses is a constitutive element that determines whether or not corruption is proven.

Referring to the description, the element of state or state economic losses can only be measured based on the parameters of the economic approach based on the principles of: maximization, efficiency and balance. These parameters are objective benchmarks of the legal aspect and the legal aspect of the economy which not only emphasize quantitative success *(output)* , but also qualitative success *(outcome)* or the significant impact generated. In this context, the eradication of corruption has a "state goal *" (interim target),* namely the return of state financial losses to achieve the final goal *(endgoal),* namely to help create a just and prosperous society.

In addition to that, the broad meaning of corruption eradication *addresses* includes prevention strategies, in addition to enforcement. Prevention strategies have been regulated in Law Number 28 of 1999 with the aim of creating a clean and corruption-free government. The spearhead of this strategy is assigned to the Commission for the Examination of the Wealth of the Organizers (KPKPN). KPKPN was finally liquidated through Law Number 30 of 2002

concerning the Establishment of the Corruption Eradication Commission. The KPK then continued the prevention strategy owned by KPKPN, complementing the enforcement strategy. The definition of the crime of corruption has undergone fundamental developments, from the simple to the broad and complex, as regulated in Article 1 Paragraph (1) of Law Number 3 of 1971: "Anyone who unlawfully commits an act to enrich themselves or another person, or an Agency, which directly or indirectly harms state finances and/or the state economy, or is known or reasonably suspected by him that the act is detrimental to state finances or the state economy." The scope of corruption eradication with the amendment to the law is included in the article, but is not limited to the expansion of norms on criminal acts, corruption alone, but also on the actions of state administrators who obtain benefits that should not be received (*undue advantage),* such as provisions on gratification (Article 12B of Law Number 20 of 2001) and acts of active bribery *and* passive *bribery.* Apart from these changes, unlawful acts include means to enrich oneself "or another person" or a "corporation", whether a legal entity or not. Other provisions that expand the scope of corruption eradication are the obligation for defendants to provide information about the source of their wealth. So, if there is wealth that is not balanced with their income or there is an increase in wealth, these things can be used to strengthen the statements of other witnesses that the defendant has or has not committed a criminal act of corruption.

In the amendment to Law Number 20 of 2001, provisions have been proposed for a limited *reversal of burden of proof system* which is different from the negative *wettelijke beginsel system,* as stated in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). New provisions after the ratification of the 2003 United Nations Convention Against Corruption (UN Conventions Against Corruption), which has been ratified by Law of the Republic of Indonesia Number 7 of 2006, include seven (7) things, namely: 21 Criminal acts of bribery of foreign public officials and officials of international organizations (*bribery of foreign public officials and officials of international organizations)* - Article 16, namely Criminal acts of embezzlement , *misappropriation, or other diversion of property by a public official* - Article 17, namely Criminal acts of trading *in influence - P* origin 18, namely Criminal acts of enriching oneself illicitly (*illicit enrichment)* Article 20, namely Criminal acts of bribery in the private sector (*bribery in the private sector)* Article 21, namely Reverse proof of the proceeds of corruption in the context of blocking, confiscation and confiscation (*freezing, seizure and confiscation)* - Article 31Article 8. Article 2 and Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption that the change in the development of the direction of corruption eradication after the ratification of the convention

strengthens the view that corruption is not the act of state administrators or public officials alone, but is also the result of collaboration between the public and private sectors, while the goal of the deterrent effect *is* no longer the main goal, but a secondary goal or complementary *to* the goal of saving state financial losses. Based on Article 6 letters d and 3 of Law Number 30 of 2002 concerning the Corruption Eradication Commission, the change in the direction of the corruption eradication policy as described shows that the prevention function is as important as the enforcement function, and the two functions must still be complemented by a restorative function or recovery of state financial losses.

The logical consequences of the change in the political direction of corruption eradication after the ratification of the convention are very important and relevant in eradicating corruption in the future, *ius constituendum* existence of three Laws Number 17 of 2003 concerning State Finance, Law Number 1 of 2004 concerning State Treasury, and no less important and very strategic in saving state finances Law Number 6 of 1983 in conjunction with Law Number 16 of 2009 concerning the Stipulation of Government Regulation Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures (KUP). The KUP Law stipulates that taxes are a strategic source of state revenue. The implementation of the KUP Law does not care about the origin of the acquisition of each taxpayer's assets, while the Law Number 13 of 1999 to 2001 actually questions the origin of the assets of each state administrator as *an entry point* to determine whether or not there is an alleged corruption crime. However, based on Article 2 and Article 3 of Law Number 31 of 1999, the concept of accountability for state financial management related to state losses is different. This is because the return of state losses must go through a criminal prosecution process that takes approximately 450 days (in accordance with the Criminal Procedure Code). LPIKP is of the opinion that there is a major difference between the two laws (the KUP Law and Law Number 31 of 1999 concerning the Eradication of Corruption) in providing an assessment of the origin of the assets of each public official and individual. The KUP Law does not question the origin of the assets, whereas the Corruption Law questions the origin of the acquisition of the assets.

In relation to this, the provisions of Article 4 of the Corruption Law which states that "Return of state financial losses does not eliminate prosecution" is contrary to the objectives of Law Number 20 of 1997 concerning Non-Tax State Income. On the other hand, there is non-compliance with the principles and application of criminal law norms in the practice of implementing Article 62 Paragraph (2) of Law Number 1 of 2004. The explanation of Article 62 Paragraph (2) states as follows: "What is meant by following up in accordance with

applicable laws and regulations is submitting the results of the examination along with the evidence to the authorized agency". The sentence "the evidence" in the explanation of the article must be interpreted as "sufficient initial evidence" in accordance with the Criminal Procedure Code. The Audit Board of Indonesia (BPK) is of the opinion that the task of obtaining such evidence is the task of the investigator in this case the Police, not the task and authority of the BPK. In the context of state finance, as regulated in Law Number 17 of 2003 and Law Number KUP of 1983 to 2009, it is clear that legal policy in the field of state finance seeks to maximize state revenue from PNBP. This objective is reinforced by Law Number 1 of 2004 concerning State Treasury, namely the restoration of state financial wealth through the application of administrative sanctions which are considered more efficient and effective in terms of time and costs that must be incurred by the state.

Referring to the different characters and objectives in the law, it can be concluded that the objectives and targets of tax revenue, among others, are caused by the unsynchronization factor between *the cluster of* legislation related to State Finance (State Finance Law, State Treasury Law, and KUP Law) and the Corruption Law. The unsynchronization is also caused by the difference in the application of sanctions. *The cluster* related to state finance mandates the application of administrative sanctions, while the Corruption Law applies criminal sanctions (punishment).

The government has recently planned to submit a Tax Amnesty Bill with the aim of increasing state revenue from taxes, which is carried out through the simultaneous withdrawal of personal assets placed in other countries. However, in the bill, the personal assets that are exempted do not include proceeds of corruption. This results in a conflict of provisions with the Corruption Law and Law Number 8 of 2010 concerning Money Laundering (TPPU), which do not exempt assets resulting from corruption from criminal prosecution and asset confiscation.

The conflict of laws and regulations in the context of eradicating corruption on the one hand, and increasing state revenue from taxes and PNBP on the other hand is found in Article 2, Article 3 and Article 4 of Law Number 31 of 1999 and Article 3 and Article 5 of Law Number 8 of 2010. The core of the conflict is, on the one hand the government is committed to significantly increasing state revenue from the tax sector, but on the other hand the proceeds of criminal acts of corruption are the object of the Corruption Law and the Money Laundering Law, where the return of the proceeds of criminal acts of corruption without criminal punishment is an act that is prohibited under the two laws.

These conditions and problems reflect that legal policy in eradicating corruption has not been studied comprehensively regarding its " *cost and benefit ratio"* for the purpose of creating a prosperous legal state.

Implementation of Sting Operations by Investigators

The success of investigators in uncovering corruption cases is one of them by using the Hand Catch Operation (OTT) technique. Hand Catch Operations carried out by investigators are supported by the results of wiretapping. Wiretapping is an effective alternative in criminal investigations into the development of crime modes or serious crimes, in this case, wiretapping is a crime prevention and detection tool that is considered effective or one of the techniques to obtain information in an effort to reveal cases and as a basis for determining the next investigative steps.

The authority given to law enforcement agencies to conduct wiretapping is given in several laws as follows:

1. Republic of Indonesia National Police

In Article 55 of Law Number 5 of 1997 concerning Psychotropics, the authority to conduct wiretapping is given to investigators of the Republic of Indonesia National Police against people who are suspected and strongly suspected of discussing issues related to psychotropic crimes. In addition, Article 55 letter c provides a time limit for wiretapping, which is a maximum of 30 (thirty) days. Through this limitation, if the wiretapping is carried out for more than 30 (thirty) days, the wiretapping is invalid.

2. Prosecutor's Office

In Law Number 16 of 2004 concerning the Prosecutor's Office, there are regulations regarding the authority of the prosecutor in investigating corruption crimes. This authority is stated in Article 30 paragraph (1) letter d which reads "one of the duties and authorities of the Prosecutor's Office in the criminal field is to conduct investigations into certain crimes based on the law". From the provisions of Article 41 of Law Number 36 of 1999 concerning Telecommunications in order to prove the truth of telecommunications service providers are required to record the use of telecommunications facilities used by telecommunications service users and can record information in accordance with applicable laws and regulations.

Then Article 42 of Law Number 36 of 1999 concerning Telecommunications for the purposes of criminal justice processes, telecommunications service providers can record information sent and can provide the necessary information at the request of the Attorney General and/or the Chief of the Indonesian National Police for certain crimes, requests from investigators for certain crimes in accordance with applicable laws. In the provisions of Article

42, Telecommunications Service Providers are entitled to conduct wiretapping at the written request of the Attorney General, the Chief of the Indonesian National Police or the request of investigators.

3. Corruption Eradication Commission

OTT which is often preceded by wiretapping is certainly easier in practice than the investigation process that should be carried out by KPK investigators, because after a public report, investigators must carry out the collection of evidence and information (*pulbaket)* which is not easy until they obtain sufficient initial evidence (bukperckp). Wiretapping makes it easier for the KPK to find out what, where and when (will) the "transaction" occur, at least the KPK has data on *the locus* and place of *the crime* easily and only needs to obtain evidence which will be continued with the examination of witnesses or potential suspects. The explanation of Article 31 paragraph (1) of Law Number 1 of 2008 concerning Electronic Information and Transactions states that what is meant by interception or wiretapping is: "Activities to listen to, record, divert, change, inhibit, and/or record the transmission of Electronic Information and/or Electronic Documents that are not public, either using a communication cable network or a wireless network such as electromagnetic or radio frequency transmissions."

In order to eradicate corruption, the Law gives the KPK the authority to conduct wiretapping, as regulated in Article 12 paragraph (1) of Law Number 30 of 2002 concerning the Corruption Eradication Commission which states that: "In carrying out the duties of investigation, inquiry, and prosecution as referred to in Article 6 letter c, the Corruption Eradication Commission has the authority to conduct wiretapping and record conversations". Meanwhile, regarding the wiretapping techniques carried out by the KPK which are not explained in Law Number 30 of 2002 concerning the Corruption Eradication Commission, there are several things that must be considered. This is in accordance with the Regulation of the Minister of Communication and Information Number: 11/Per/M. Kominfo/02/2006 concerning wiretapping techniques which are the basis for the procedures for wiretapping by the KPK, including:

1) The Corruption Eradication Commission must send target identification to telecommunications providers both electronically and non-electronically.
2) Telecommunication wiretapping must be carried out by the Corruption Eradication Commission with the Standard Operating Procedure (SOP) for Wiretapping that has been determined, without disrupting the smooth flow of communication and telecommunication

users and must be reported by the Corruption Eradication Commission to the Director General of Post and Telecommunications.

3) Communications providers are required to assist the Corruption Eradication Commission in conducting wiretapping according to the law by preparing a capacity of no more than 2% of that registered in *the Home Location Register* from the installed capacity for each central local *public switch telephone network (PTSN).*
4) To ensure transparency and independence in wiretapping, a monitoring team was formed consisting of the Directorate General of Post and Telecommunications, the Corruption Eradication Commission and the relevant communication organizers, with duties and authorities according to the warrant brought by the Corruption Eradication Commission.
5) Information obtained from wiretapping is confidential, so the results of the opinion may not be traded or disseminated in any way, except for the Eradication of Criminal Acts of Corruption in accordance with applicable legal provisions with efforts to uncover criminal acts of corruption.
6) The costs of the information tapping tools and equipment are borne by the Corruption Eradication Agency, while the costs of relay capacity in the form of HLR and PTSN are borne by the communication provider.

In carrying out its actions, the Corruption Eradication Commission uses methods to carry out wiretapping, including:

1) Wiretapping mode using an *interceptor device* This wiretapping mode works by the *interceptor device* capturing and processing signals detected from a mobile phone. In addition, in this mode, the *interceptor device* is also equipped with *a Radio Frequency triangulation locator* which functions to capture signals accurately. In addition, in this mode there is a tool called *Digital Signal Processing Software* which makes algorithm processing fast and easy. Thus, law enforcement using this device can capture signals, cellular traffic and target specific target specifications. So, this device can tap various conversations on mobile phones whose signals are still captured within its range.
2) The second mode of tapping is by means of *spyware* software *such* as a malicious program such as *a trojan* and *malware, spyware* is able to track cell phone activity and send the information to a third party, in this case the tapper. Therefore, *spyware applications* cause the battery and credit of the cell phone to drain quickly. This program can disable certain programs in the cell phone, even delete information stored in the cell phone without the knowledge of the cell phone owner.

The authority of the KPK to conduct wiretapping granted by Law Number 30 of 2002 concerning the Corruption Eradication Commission (hereinafter referred to as the KPK Law), does not explain in detail the mechanism and limitations regarding the implementation of the wiretapping. This is different from wiretapping carried out in terrorism cases which by Article 31 of PERPU Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism as has been ratified as Law Number 15 of 2003 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism has been regulated in detail for its implementation as follows:

1. Based on sufficient preliminary evidence as referred to in Article 26 paragraph (4), investigators have the right to:
   a) Opening, examining and confiscating letters and deliveries via post or other delivery services that are related to terrorism cases that are being investigated.
   b) Tapping telephone conversations or other communication devices suspected of being used to prepare, plan and carry out acts of terrorism.
2. The wiretapping action as referred to in paragraph (1) letter b, may only be carried out on the orders of the Head of the District Court for a maximum period of 1 (one) year.
3. Actions as referred to in paragraph (1) and paragraph (2) must be reported or accounted for to the investigator's superior.

The ambiguity regarding the mechanism and limitations of the KPK's wiretapping authority has given rise to the public assumption that the KPK's wiretapping authority has violated the law and even violated Human Rights (HAM), namely violating a person's right to privacy. The KPK's wiretapping cannot basically be considered a violation of the law before there is a special law that regulates in detail the mechanism and limitations of the implementation of wiretapping by the KPK. This is because the legal system in Indonesia adheres to the principle *of legality*, namely the principle that determines that no act is prohibited if it is not first determined in statutory regulations (which in the Dutch language is stated *as nullum delictum nulla poena sine praevia lege).* The KPK's wiretapping can only be considered a violation of the law when the wiretapping process is not carried out by an authorized official, for example, a KPK person carries out wiretapping even though he is not a KPK investigator who is examining a case. This is because Article 12 paragraph (1) letter (a) of the KPK Law states that in matters of investigation and inquiry, the KPK has the authority to carry out wiretapping. The authority to conduct wiretapping does not lie with the institution (KPK) but with the KPK investigators who are examining a case.

Basically, wiretapping is very necessary to obtain evidence in this “white collar” (corruption) case, because it is difficult to obtain evidence in this case so that conventional methods are considered no longer effective. The wiretapping action by the KPK has several legal bases and considerations, including Article 12 letter (a) of Law Number 30 of 2002 concerning the KPK, which regulates wiretapping as part of the actions that may be carried out by the KPK in investigations, inquiries and prosecutions. In terms of formal legality, the KPK has the authority to carry out this action in order to supervise, find evidence and prove the existence of alleged corruption and prosecute it in court. Another consideration for wiretapping is that there is already a strong suspicion obtained from the report of the results of supervision (indications) and sufficient preliminary evidence. Although the KPK has the task and authority to conduct wiretapping in formal legality, this does not mean that the KPK can be arbitrary in its use, but there must be a procedure that can be accounted for before conducting wiretapping so that it does not violate human rights and interfere with someone's personal rights.

Based on Article 32 of Law Number 39 of 1999, it provides guarantees for citizens in terms of freedom and confidentiality of their communication relationships through any means, but the legal provisions apparently provide limitations that must be considered, namely if the judge's order determines that the interference (wiretapping) is valid in accordance with the provisions of applicable laws and regulations, then the wiretapping must not be carried out. This is as stipulated in Article 28 J of the 1945 Constitution which states:

1) Everyone is obliged to respect the human rights of others in orderly life in society, nation and state.
2) In exercising their rights and freedoms, every person is obliged to submit to the restrictions established by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security and public order in a democratic society.”

In relation to the wiretapping conducted by the KPK, Article 32 actually becomes the legal basis for the KPK to conduct wiretapping. The sentence 'legitimate power according to applicable laws and regulations' is indeed not clear in what power. Because, the explanation of Article 32 is written 'quite clearly'.

The authority of the Corruption Eradication Committee (KPK) which originates from Law Number 32 of 2002 can be called a legitimate authority according to the applicable laws, and does not have to obtain permission from the district court judge (PN), but if the wiretapping action results in losses, then a rehabilitation or compensation mechanism has been provided for it. This is as regulated in Article 63 paragraph (1) and (2) of Law Number 30 of 2002.

This mechanism is provided as a form of implementing the principle of legal certainty and justice that pays attention to the protection of human rights. A person's right to freedom of communication is a human right, but it can be limited or reduced through a regulation at the level of a law as long as it is based on considerations of morality, religious values, security, and public order in a democratic society. Human rights arguments are often positioned at odds with serious efforts to eradicate corruption. At one point, human rights reasons become contradictory to efforts to protect collective human rights (public human rights).

The conflict between the norms of individual human rights protection and public human rights should be placed in a balanced proportion and cannot be exaggerated, prioritized (prioritized) one over the other. Thus, normatively, the wiretapping regulation already has a clear legal basis, both at the level of laws and ministerial regulations, and does not conflict with the 1945 Constitution and the International Human Rights Convention. One argument that emerged regarding the Hand-Catching Operation is related to the definition of "Caught Red-handed" in the Criminal Procedure Code. Parties who consider that Hand-Catching Operations (OTT) are illegal base their argument on the absence of the term "Hand-Catching Operation" in the Criminal Procedure Code, there is only "Caught Red-handed". In Article 1 number 19 of the Criminal Procedure Code, it is stated that: "Caught red-handed is the arrest of a person while committing a crime, or immediately after the crime has been committed, or shortly afterwards is reported by the public as the person who committed it, or if shortly afterwards an object is found on him that is strongly suspected of having been used to commit the crime which indicates that he is the perpetrator or has participated in or helped commit the crime". The first is related to whether "Caught Red-handed" is a norm or a legal norm. To answer this, it is necessary to look back at what is meant by a norm. A norm is basically a rule or guideline on how a subject should behave. Norms, especially legal norms, always contain three (3) possibilities, namely:

1) What not to do (*verbod*)
2) What to do (*gebod*) and
3) What can be done (mogen *)*

If we look at these three things, then the question is, is the definition of "Caught Red-handed" included in one of them. Something that starts with the word "is" is certainly not a rule, but merely a definition. If it is associated with norms and for that it needs to be traced the following provisions in the Criminal Procedure Code which use the term "Caught Red-handed". For example, if we look closely, the term "Caught Red-handed" has only become part of a norm, namely in Article 18 paragraph (2) of the Criminal Procedure Code, namely:

1. The execution of the arrest task is carried out by the Indonesian National Police Officer by showing the assignment letter and giving the suspect an arrest warrant which includes the suspect's identity and states the reasons for the arrest as well as a brief description of the suspected crime and the place where he is being questioned.
2. In the case of being “caught red-handed”, the arrest is carried out without a warrant, with the provision that the arrestee must immediately hand over the person caught along with the evidence to the nearest investigator or assistant investigator.
3. A copy of the arrest warrant as referred to in paragraph (1) must be given to the family immediately after the arrest is made."

Based on Article 18 of the Criminal Procedure Code above, it is an example of a norm, where the provisions essentially regulate that the authority to make an arrest is carried out by an Indonesian Police Officer and must be accompanied by an Arrest Warrant (Sprint-Kap). This norm is mandatory (*gebod).* This obligation can be deviated from if the conditions explained in the following paragraph are met, namely if the condition is caught red-handed (paragraph 2). So paragraph (2) is a norm that contains permissibility, the permissibility to be accompanied by a warrant, but also contains a requirement, namely that the arrester is obliged to hand over the person caught red-handed along with evidence to the nearest investigator or assistant investigator.

If we examine further the other 6 (six) provisions containing the term "caught red-handed" it can be concluded that the existence of this term is basically only to change a norm of necessity or prohibition into a permit. Article 35 of the Criminal Procedure Code, for example, regarding searches in certain places in certain situations, it is prohibited to conduct searches, it becomes permissible to conduct searches if the condition is caught red-handed. Article 111 paragraph (1) of the Criminal Procedure Code, excludes the article on the conditions for the subject who is authorized to make an arrest in Article 18 paragraph (1) of the Criminal Procedure Code which states that the Indonesian Police Officers may also be carried out by ordinary people if the condition is caught red -handed. To assess whether the "Sting Operation" carried out by the KPK, the Police, and the Prosecutor's Office violates the norms regulated in the Criminal Procedure Code both in the Criminal Procedure Code and the KPK Law, the Republic of Indonesia Police Law, the Republic of Indonesia Prosecutor's Office Law and the Corruption Crime Law, it is certainly necessary to see what concrete actions are carried out by law enforcers in concrete cases.

As an illustration, in an OTT, the Police Officers arrest someone, then the arrest actions can be tested whether they are in accordance with the requirements for arrest. For example, it

turns out that the Police Officer who made the arrest did so without a warrant as required in Article 18 paragraph (1) of the Criminal Procedure Code, even though the incident was not caught red-handed, but let's say 1 (one) day after the criminal incident occurred, then the arrest is still invalid even within the framework of a "Sting Operation". Another example, in an OTT the Police Officers immediately detain the Suspect without a Detention Warrant (Sprint-Han) on the grounds of OTT or because the suspect was caught red-handed. The act of detention is still wrong, because whether or not the suspect was caught red-handed is not an exception to the requirement for a Detention Warrant (Sprint-Han) as regulated in Article 21 paragraph (2) of the Criminal Procedure Code. There are several notes related to the Sting Operation:

First , there is a difference in the principle of proof in civil cases and criminal cases. In civil cases, the parties who have a civil legal relationship tend to provide evidence with the intention that if a dispute occurs later, the parties will submit evidence to strengthen their arguments in court. This is different from criminal cases, where the perpetrator always tries to eliminate evidence or erase traces of the crime committed. Sting operations are more effective in proving crimes that are difficult to prove, including corruption.

Second , in proving criminal cases there is a postulate that states *in criminalibus probantiones bedent esse luce clariores.* That in criminal cases, the evidence must be clearer than light. This means that to prove someone as a perpetrator of a crime is not only based on suspicion, but the existing evidence must be clear, transparent, and accurate. This is in order to convince the judge to impose a sentence without the slightest doubt. A sting operation is the most powerful way to make the evidence clearer and brighter than light.

Third , in the context of corruption, a sting operation is certainly preceded by a series of wiretapping actions that have been carried out within a certain period of time. The results of wiretapping are basically preliminary evidence of a crime if there is a match between one piece of evidence and another (*corroborating evidence).* A sting operation is only to concretize a series of wiretapping actions that have been carried out previously so that the preliminary evidence that has been obtained will be sufficient preliminary evidence. This means that the case is ready to be processed criminally because it has at least two pieces of evidence.

Fourth , in the context of evidentiary power, a sting operation can be said to fulfill perfect proof (*probation plena).* This means that the evidence no longer raises doubts about the perpetrator's involvement in a crime. However, the judge in a criminal case is not absolutely related to any evidence. However, a sting operation can at least eliminate such doubts. Fifth, like a gambling game, a person caught in a sting operation is the same as a gambler holding a dead card in the game. This means that the gambler holding the card will not be able to win the

game. Likewise, a person caught red-handed committing a crime finds it difficult to defend that he was not involved in the case.

Without disregarding the principle of presumption of innocence, it is certain that a person arrested in a sting operation will be proven guilty of committing the crime. Therefore, there are only two things that can be done by a person caught red-handed in order to reduce the sentence. ***First*** , admit his guilt and not complicate the legal process. ***Second*** , collaborate with law enforcement officers to uncover the case if the case was carried out in an organized manner and involved many parties.

Criminal Law Consequences of Corruption Crimes Through Sting Operations .

Not all people caught in a sting operation will necessarily be named as suspects. A person caught in a sting operation by the Corruption Eradication Commission (KPK) has the right to know who the officer who arrested him/her is and must be able to explain that the person who carried out the Sting Operation (OTT) was a KPK officer. People caught in a KPK OTT also have the right to dress appropriately. For example, a person caught red-handed without clothes, KPK officers will give them the opportunity to wear appropriate clothing. In addition, it is the right of a person caught in a sting operation for their family to receive notification regarding the sting operation carried out by KPK officers and will be taken to the KPK office along with evidence found by KPK officers, after the handover, the KPK will conduct an examination which is stated in the Minutes of Request for Information (BAPK). In this case, his/her status is still as an examinee and has not been named a suspect and does not yet have the right to contact or be accompanied by a lawyer. If he/she has been named a suspect, the rights granted by the Criminal Procedure Code will automatically be attached. Criminals will be given the right to contact a lawyer and be accompanied by a lawyer during the examination according to the procedures applicable at the Corruption Eradication Committee (KPK) and the status of a suspect will be increased after the OTT no later than 1x24 hours.

In the Criminal Procedure Code (KUHAP), during the investigation stage, the suspect has the right to freely provide information to the investigator for the sake of his defense and the suspect has the right to receive legal assistance from a person or legal advisor at all levels of examination and the suspect has the right to choose his own legal advisor. Based on Article 57 of the Criminal Procedure Code, a suspect who is detained also has the right to contact his legal advisor. Article 58 explains that it will provide the right for a suspect who is detained to contact and receive visits from his personal doctor for health reasons, whether related to the case process or not related to the case. Furthermore, Article 60 states that the suspect has the right to contact and receive visits from parties who have family or other relationships in order

to obtain guarantees for the suspension of detention or efforts to obtain legal assistance. There are still several other rights regulated in the Criminal Procedure Code, one of which is receiving visits from clergy.

A person caught red-handed committing a crime must go through a trial process first before being punished if proven guilty. Furthermore, the perpetrator of the crime becomes a convict becomes a convict, namely a person who will be punished must be based on a court decision that has obtained permanent legal force. So, for perpetrators caught red-handed, criminal sanctions cannot be imposed immediately before going through the trial process.

Naming someone as a suspect is quite easy in Indonesia. With just a police report and one valid piece of evidence, someone can immediately be named a suspect. News reports on the arrest of state officials in sting operations should provide material on criminal procedural law so that the public has the opportunity to learn how procedural law is applied in Indonesia. Criminal procedural law is often applied based on different interpretations of the law by law enforcement officers. Regarding the determination of suspect status, the criminal procedural law that applies in Indonesia is Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP). Regarding the definition of a suspect, it is clearly regulated in the provisions of Article 1 number 14 of the KUHAP. Furthermore, regarding the definition of a suspect with the same problem formulation, it is regulated in the provisions of Article 1 number 10 of the Regulation of the Chief of Police Number 14 of 2012 concerning Criminal Investigation Management (Perkap Number 14 of 2012).

Regarding the preliminary evidence as referred to in Article 1 number 14 of the Criminal Procedure Code, it is not specifically regulated in the Criminal Procedure Code. Regarding the definition, it is regulated in Article 1 number 21 of Regulation of the Chief of Police Number 14 of 2012. So based on the police report and one valid piece of evidence, a person can be named a suspect and can be arrested. The Criminal Procedure Code does not explain further about the definition of preliminary evidence, but the Criminal Procedure Code clearly regulates valid evidence in the provisions of Article 184 of the Criminal Procedure Code. In the investigation process, it is only possible to obtain valid evidence. Meanwhile, evidence is obtained from the judge's assessment after conducting an examination in court.

If in an investigation process there is a police report and one valid piece of evidence, then a person can be named a suspect. If there is a police report supported by one valid piece of evidence by also considering the provisions of Article 185 paragraph 3 and Article 189 paragraph 1 of the Criminal Procedure Code, then a person can be named a suspect. A suspect cannot be immediately subjected to coercive measures in the form of arrest because there are

certain conditions regulated by Perkap Number 14 of 2012. So an arrest can only be carried out if the suspect is absent without a proper and reasonable reason after being summoned twice in a row by the investigator. However, a suspect can be detained even though he is not subject to an arrest.

The act of detention is carried out with alternative considerations based on the provisions of Article 44 of Regulation of the Chief of Police Number 14 of 2012. The elaboration of the principle of simple, fast and low-cost justice is emphasized in Article 50 of the Criminal Procedure Code, which provides legal and statutory rights to suspects/defendants:

1. Have the right to be immediately examined by investigators
2. Has the right to be immediately brought to court
3. The right to be tried immediately and receive a court decision (speedy trial right).

The right to carry out a defense in the interests of preparing the defense rights of the suspect or defendant, for the law which explains in articles 51 to 57

a. The right to be informed clearly and in a language he understands about what he is accused of.
b. Such notification rights are exercised against suspects.
c. The accused also has the right to be informed clearly and in a language he understands about what he is accused of.
d. The right to receive an interpreter applies at every level of examination, both in investigative examinations and in court hearings.
e. Having the right to freely choose a legal advisor in accordance with the provisions of Article 55 and this can cause defects in the practice of law enforcement, because the freedom and right to choose a legal advisor will certainly give rise to discriminatory practices.
f. The rights of suspects or defendants who are in detention have been discussed, namely the rights that apply generally to defendants whether they are in detention or outside detention.

The impact of corruption on society and individuals if corruption in a society has become rampant and becomes the daily food of society, then the result will make the society a chaotic society, no social system can work properly. Every individual in society will only care about themselves (*self interest)* even *selfishness.* There is no sincere cooperation and brotherhood. Corruption causes sharp differences between social groups and individuals both in terms of income, *prestige,* power and others. Corruption is also dangerous to the moral and intellectual standards of society. When corruption is rampant, there are no main values or nobility in society.

a) The impact of corruption on the younger generation

One of the most dangerous negative effects of corruption in the long term is the destruction of the younger generation. In a society where corruption has become a daily food, children grow up with antisocial personalities, then the younger generation will consider corruption as a common thing or even consider it as their culture, so that their personal development becomes accustomed to dishonesty and irresponsibility.

If the young generation of a nation is in such a condition, one can imagine how bleak the future of the nation's children will be. The impact of corruption on political power politics achieved through corruption will result in a government and community leaders who are not *legitimate* in the eyes of the public. If this is the case, then the community will not trust the government and leaders, as a result they will not obey and submit to their authority. Widespread corruption practices in politics such as fraudulent elections, violence in elections, *money politics* and others can also damage democracy, because to maintain the power of the corrupt rulers they will use violence or be authoritarian and spread corruption even wider in society. In addition, such a situation will trigger socio-political instability and social integration, because there is conflict between the rulers and the people. Even in many cases, this has led to the fall of government power dishonorably, as has happened in Indonesia.

b) Impact of Corruption on the Economy

Corruption damages the economic development of a nation. If an economic project is run with elements of corruption (bribery for project approval, nepotism in appointment, embezzlement in its implementation and other forms of corruption in the project), then the economic growth expected from the project will not be achieved.

c) The Impact of Corruption on Bureaucracy

Corruption also causes bureaucratic inefficiency and increases administrative costs in the bureaucracy. If the bureaucracy has been filled with corruption in various forms, then the basic principles of rational, efficient and qualified bureaucracy will never be implemented. The quality of service will certainly be very poor and disappoint the public. Only those who are wealthy will be able to get good service because they are able to bribe. This situation can cause widespread social unrest, social inequality and then possibly social anger that causes the fall of bureaucrats. State officials caught in the KPK's OTT need their political rights revoked. Revocation of political rights, especially the right to be elected as a public official, is a form of punishment because the person concerned is not trustworthy in holding public office and so that the person concerned can no longer abuse his authority. Based on

Article 73 of Law Number 39 of 1999 concerning Human Rights, it is stated that restrictions or revocation of human rights are only permitted based on law.

The goal is to guarantee the recognition and respect of human rights and basic freedoms of others, morality, public order, and the interests of the nation. Revocation of political rights is regulated in Article 35 paragraph 1 of the Criminal Code, that the rights of convicts that can be revoked by a judge's decision include the right to hold office, the right to join the armed forces, and the right to vote and be elected in general elections. Thus, the legal basis for judges in deciding to revoke political rights is valid because there is a legal basis equivalent to the law, namely the Criminal Code. No one disagrees that public officials who are proven to have committed corruption must be punished as severely as possible and are prohibited from holding public office. However, the definition and size of public office must also be clear and measurable regarding public office obtained through a general election mechanism, such as members of the DPR, regents, governors, and presidents through career paths, such as structural positions in government, judges, prosecutors, and police or positions that are included as positions obtained through political decisions, such as ministerial positions and heads of state institutions. Based on Article 25 of the Covenant on Civil Rights, it is clearly stated that the revocation of political rights is "only" related to political positions obtained through general elections, such as positions as members of parliament, regents, governors, and presidents. However, the revocation of political rights cannot be done permanently. There must be a clear limit on how long political rights are revoked. In terms of revocation of the right to hold public office, which is included in the realm of civil rights, Article 35 paragraph 1 of the Criminal Code only regulates that judges can revoke "the right to hold certain positions". The classification of certain positions must be clear and transparent so that there is no multi-interpretation in its application. The government needs to issue regulations to define certain types of positions. The revocation of political rights against corruptors is an action that should be supported in order to provide a deterrent effect in eradicating corruption amidst the low verdicts in corruption cases. However, in order to be effective and have a deterrent effect, additional legal instruments are needed so that the mechanism for revoking political rights against corruptors remains in line with human rights and becomes a progressive legal movement in eradicating corruption.

5. CONCLUSION

The conclusions that can be drawn regarding the criminal law policy regarding Corruption Crimes Through Sting Operations are as follows:

1. The provisions of Article 1 to 3 and Article 6 letter d of Law Number 30 of 2002 concerning the Corruption Eradication Commission concerning the duties and obligations of the KPK, namely to eradicate corruption, namely eradication is a series of actions to prevent and is imperative, not as an alternative or choice among other tasks. In fact, the legal policy of the formation of the KPK law emphasizes more on the prevention of corruption, as well as the parameter of the success of the KPK's performance is to eliminate corruption (no corruption). For this reason, the eradication of corruption must be carried out in an extraordinary way using special methods. The existence of the KPK in Indonesia is the best solution for *the legal policy* of eradicating corruption which is based on the desire of the Indonesian people so that the eradication of corruption in Indonesia can be maximized.
2. Investigators in combating corruption through Hand-caught Operations in uncovering corruption cases are supported by wiretapping techniques. Wiretapping is one of the techniques for obtaining information in an effort to uncover cases and as a basis for determining the next steps of the investigation. Wiretapping is the activity of listening, recording, diverting, changing, inhibiting, and/or recording the transmission of electronic information and/or electronic documents using either a communication cable network or a wireless network, such as electromagnetic or radio frequency transmissions, including checking packages, mail, correspondence, and other documents.
3. State officials caught in the KPK's OTT need to have their political rights revoked. Revocation of political rights, especially the right to be elected as a public official, is a form of punishment because the person concerned is not trustworthy in holding public office so that the person concerned can no longer use his authority. Revocation of political rights is regulated in Article 35 paragraph 1 of the Criminal Procedure Code. That the rights of convicts that can be revoked by a judge's decision include the right to hold office, the right to enter the armed forces and the right to vote and be elected in general elections.

6. SUGGESTION

The suggestions given regarding criminal law policy against Corruption Crimes Through Sting Operations are as follows:

1. Considering that corruption is an extraordinary crime , efforts to eradicate it cannot be carried out in an ordinary way, but must be carried out in extraordinary ways, namely

through 4 approaches, namely a legal approach, a cultural approach, an economic approach, and a human resources and financial resources approach.

2. The KPK should continue to be guided by Law Number 30 of 2002 concerning the KPK, Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption and Law Number 28 of 1999 concerning State Administrators Who Are Clean and Free from Corruption, Collusion and Nepotism as the legal basis used in eradicating criminal acts of corruption in Indonesia.
3. Revocation of political rights against corruptors is an action that should be supported in order to provide a deterrent effect in eradicating corruption. However, in order to be effective and have a deterrent effect, additional legal instruments are needed so that the mechanism for revoking political rights against corruptors remains in line with human rights and becomes a progressive legal movement in eradicating corruption.

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