

Intelligence Authority of the Prosecutor's Office in Executing Arrests of Corruption Perpetrators

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Abstract. *The purpose of this research is to find out, examine and analyze the authority of the Prosecutor's Intelligence in carrying out intelligence operations to execute arrests of perpetrators of corruption. In this writing the author uses a normative juridical method with research specifications in the form of descriptive analysis. One of the important aspects of intelligence activities in carrying out operations to catch perpetrators of corruption is the Prosecutor's Office intelligence, namely through investigative activities to be able to anticipate, identify, detect and solve various problems facing the nation. Intelligence is also always faced with problems that are completely secret, vague or full of enigmas, for this reason intelligence always works in complete secrecy, so that intelligence is often called a secret service where intelligence must be able to solve problems that are full of secrets and in secret with all the risks. An Intelligence Operation for the execution of Arrest is an attempt by the Prosecutor's Office to catch someone suspected of being the perpetrator of a red-handed criminal act of corruption. An operation that is secretive, measurable and rarely targets operations that can survive accusations because it is based on a long process when the Prosecutor's Office "sniffs" that there are indications of criminal acts of corruption.*

Keywords: Arrest; Corruption; Intelligence; Prosecutor.

1. Introduction

In the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3) states that the Republic of Indonesia is a state based on law based on Pancasila and the 1945 Constitution, which contains the meaning of all actions and behavioral patterns of citizens which must also be in sync with the norms regulated by the state.¹

¹Supriyono, (2020), Criminology Study of Crime of Fencing the Stolen Goods, Jurnal Daulat Hukum, 3 (1), p 185

The concept of a state based on law leads to the goal of creating a democratic life, protecting human rights, and achieving just welfare.²It is the law that determines which actions may or may not be done. According to Utrecht, law is a collection of regulations (commands and prohibitions) that regulate order in a society and must be obeyed by society.³In the fourth paragraph of the opening of the 1945 Constitution, the purpose of the Indonesian state is to protect all Indonesian people, advance public welfare, educate the nation's life and participate in implementing world order. In order to realize these goals, there needs to be an effort that is carried out continuously and sustainably while still paying attention to every aspect that influences. This effort is called development.⁴

The implementation of development in it there are many inhibiting factors, one of the inhibiting factors of the development process that greatly affects the economy and state finances is the crime of corruption. In various parts of the world in general and in Indonesia in particular, corruption always gets more attention compared to other crimes. This phenomenon is understandable considering the negative impact caused by the crime of corruption. The impacts can affect various areas of life. Corruption is a threat to the nation's ideals towards a just and prosperous society.⁵

Law enforcement efforts in corruption crimes include conducting investigation and inquiry processes. To assist the process, in addition to the role of investigators and investigators in general, the role of intelligence institutions in a country is also very necessary. In law enforcement efforts, the Attorney General's Intelligence is one of the efforts made by the Attorney General's Office to uncover corruption cases. The method or method of operation of the Attorney General's Intelligence is expected to reduce the occurrence of corruption in Indonesia. The Attorney General's Intelligence is one of the parts contained in the implementation of state intelligence. In enforcing the law on corruption crimes, the Attorney General's institution has a fairly central role. The Attorney General's Office not only has the authority to prosecute, in handling special criminal cases by the Attorney General's Office it is usually divided into the stages of Investigation, Investigation, Prosecution.

In order to carry out investigation activities optimally, the prosecutor's intelligence through the intelligence section is tasked with carrying out the

²Masyhadi Irfani and Ira Alia Maerani, (2019), Criminal Code Policy in The Effort of Corruption Prevention in Institutions Regional Disaster Management Agency, *Jurnal Daulat Hukum*, 2 (1), p 75

³Sri Praptini, Sri Kusriyah and Aryani Witasari, (2019), Constitution and Constitutionalism of Indonesia, *Journal of Legal Sovereignty*, 2 (1), p 7

⁴Abdul Kholiq Nur and Gunarto, (2021), Concept of Criminal Law on Corruption of Corporate Criminal Liability System Based on Justice Value, *Jurnal Daulat Hukum*, 4 (1), p 82

⁵Danr Krisnawati, et al., (2006), *Anthology of Special Criminal Law*, Pena Pundi Aksara, Jakarta, p 78

investigation chain, namely from planning, collection activities, processing activities to data usage activities. In this case, collecting and managing data and facts if there is an allegation that there is or has been a special crime, namely corruption. If there is an allegation that an event has occurred that is suspected to be a special crime, then the prosecutor's intelligence officers carry out judicial intelligence operations/investigations, in order to determine whether the event is truly a corruption crime or not. In the case of the judicial intelligence operation/investigation being carried out by the prosecutor's intelligence, then after sufficient data and facts have been collected about the occurrence of corruption and based on the results of the prosecutor's intelligence review, there are sufficient facts or clarity regarding the crime to be investigated.

The Prosecutor's Office has the authority to conduct investigations, inquiries and prosecutions against corruption crimes, which previously were also held by the Police and the Corruption Eradication Commission. So in this case, there needs to be coordination between state institutions, namely the Police, the Prosecutor's Office and the Corruption Eradication Commission to minimize the occurrence of abuse of authority. The point is that the Prosecutor's Office must be a strong foundation both substantively and implementatively so that it is one of the institutions capable of developing the mission of law enforcement.⁶ The Prosecutor's Office also has a system to handle corruption cases, namely the Hand-Catching Operation.

The implementation of OTT carried out by the Prosecutor's Office in the example of a recent corruption case, namely the corruption case of Health Operational Assistance (BOK) funds in 2022, which arrested three perpetrators suspected of receiving Rp920 million. The OTT was carried out by the Attorney General's Office (Kejagung RI) and the Kaur District Attorney's Office (Kejari) Investigation Team who carried out a sting operation against three perpetrators related to a corruption case at a fast food restaurant in the South Jakarta area. The three were BSS, AH and RNS and have arrived at the Bengkulu High Prosecutor's Office. The three perpetrators, namely BSS, AH and RNS, received Rp920 million as evidence and the money is suspected of coming from a number of heads of health centers who received BOK funds in 2022.

In connection with this topic, to research it further and include it in legal research with the purpose of the research is knowing, reviewing and analyzing the authority of the Attorney General's Intelligence in carrying out intelligence operations to execute red-handed arrests of corruption perpetrators.

2. Research Methods

The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out

⁶Zainal Arifin Mochtar, (2017), Independent State Institution, Depok: Pt Raja Grafindo Persada, p 67.

based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this study.

3. Results and Discussion

3.1. Intelligence Terminology

The word “intelligence” does not always appear with the same understanding in all languages. Although intelligence is discussed in the context of national security, it is inseparable from the broad understanding of intelligence as a collectivity of human intelligence, creativity and wisdom. So unlike security actors who can be “forgiven” for not having the capacity for anticipatory knowledge (foreknowledge) of national security threats, intelligence agencies have a professional demand to combine human intelligence and technological advances to have this knowledge.

In Law No. 17/2011 concerning State Intelligence, intelligence has a role to carry out efforts, work, activities for early detection and early warning in order to prevent, deter, and overcome any nature of threats that may arise and threaten/disturb national interests and security. The role of state intelligence is very vital in providing the latest, accurate, fast and comprehensive information related to security guarantees and law enforcement in a democratic state of law, for that the role of intelligence must be within the corridor of legal certainty, ensuring justice for all citizens, and not ignoring the principles of democracy and Human Rights. The role of intelligence in the national security system is the first line in the national security system, for that it must adapt to the development of the post-cold war world, a multi-polar or non-polar world and the era of democratization of all fields. This includes adjusting work methods, work culture, and differentiation and specialization of functions to these conditions.⁷

Intelligence must be able to play a role as a strategic intelligence data center in assessing, identifying, analyzing, and providing information containing indications of the nature and form of threats, both potential and actual, as well as early warnings to policy makers in national security, so that quick and accurate policies can be taken to avoid strategic surprises for the safety of citizens, the nation, and the existence of the state.⁸

3.2. Sting Operation

Is “Operation Tangkap Tangan” the same as “Tertangkap Tangan”, the answer is clearly no. The operation itself means according to KBBI “the implementation of a plan that has been developed”. From this understanding it is clear that

⁷Arthur S. Hulnick, (2007), *Indications and Warnings for Homeland. Security: Seeking a New Paradigm*, Routledge: Taylor & Francis Group, *Journal Intelligence and CounterIntelligence*, 18(4), p 600.

⁸*Ibid*, p 592-593.

“Operation Tangkap Tangan” is indeed not intended as a legal term, let alone the implementation of a norm, but a name for a type of operation carried out by the KPK. There is actually no obligation for the KPK to give a name to a type of operation or action strategy. Even if the KPK calls it by another term, for example “Operation Kuda Lumping” or “Operation Delta Force”, it is fine. Judging whether OTT is wrong or not from whether the term is in the Criminal Code or not is very wrong.

To assess whether the "Sting Operation" carried out by the Corruption Eradication Committee, the National Police, and the Prosecutor's Office violated the norms regulated in the Criminal Procedure Code, both in the Criminal Procedure Code and the Corruption Eradication Committee Law, the Indonesian Police Law, the Indonesian Prosecutor's Office Law and the Corruption Eradication Law, it is necessary to look at the concrete actions taken by law enforcers in concrete cases.

As an illustration, in an OTT, a Police Officer makes an arrest of a person, 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 though it is within the framework of a "Hands-on Operation".

3.3. The Authority of the Prosecutor's Intelligence in Carrying Out Intelligence Operations to Execute the Arrest of Corruption Perpetrators

Prosecuting corruption cases is not easy. Corruption perpetrators generally have power, are intelligent, and have money, so they can easily hide their corrupt activities. In addition to hiding the mode of crime and avoiding prosecution, corruption perpetrators are also likely to fight back. The role of intelligence is very necessary as one of the elements/components in prosecution activities. To carry out appropriate and effective prosecution, accurate information from intelligence is needed as initial data for carrying out prosecution operations including sting operations. One of the roles of intelligence in terms of prosecution that is very significant in eradicating corruption is the function of wiretapping. Information from the results of wiretapping is what is developed so that sting operations are successful.

Intelligence is a tool, if used properly according to its intended use, intelligence can function as a tool to help prevent criminal acts of corruption, as a supporter in prosecuting criminal acts of corruption, and as a means of securing personnel in the process of handling criminal acts of corruption.

Meanwhile, Intelligence Operation for sting execution is an effort by the Prosecutor's Office to catch someone red-handed who is suspected of being a perpetrator of corruption. An operation that is secretive, measured and rarely

the target of the operation can survive the accusation because it is based on a long process when the Prosecutor's Office "sniffs" there are indications of corruption. According to Reda Manthovani, related to the analysis of the Prosecutor's Intelligence, After the Task Order is issued and signed by the Head of the District Attorney's Office, the Prosecutor's Intelligence section carries out a series of actions by making a Target Analysis (Ansas), Task Analysis (Antug) and Operation Target (TO).

Analysis is a term used for the process of matching, parsing, and evaluating raw information from various sources into intelligence products: in the form of alerts and situation reports, analyses, assessments, estimates, and briefing papers.⁹ Analysis and production should be conducted in close proximity to the users of intelligence products. In managing the collection, analysis can rely on collection methods to provide raw and processed information to be evaluated and then shape the product to suit the needs of the users. The product should include what is known (facts), how it is known (sources), the rationale (key assumptions), the impact of changing the rationale (alternative outcomes), and what remains unknown.¹⁰ The main goal is to minimize the uncertainty that must be faced by the executors in making decisions to carry out the arrest of suspected corruption perpetrators. So what is important is not only to determine what is accurate but also what is relevant to the needs of policy makers.

Prosecutorial Intelligence should not fulfill a request for analysis if they know in advance that the information obtained through intelligence is only marginally relevant to the overall analysis of the subject matter. Nor should they accept a request for analysis when it can be accomplished using publicly available sources unless the Prosecutorial Intelligence can give significant additional weight to the analysis of the material from open sources.

Target Analysis or Ansas, is an analysis made by the executor of intelligence operations to study in detail and thoroughly the target of the investigation. Meanwhile, Task Analysis or Antug, is an analysis made by intelligence operations to detail and analyze what information materials should be sought and collected, collect the collection materials and their sources, how to carry out the Investigation, Security, Fundraising, the time period and place of submission of reports and how to obtain and dig up as much information as possible from the target or source. Antug is a division of tasks carried out by the intelligence section to speed up the investigation process and make it easier to collect the data and information needed.

After dividing the tasks, the team from the intelligence section determines the target of the operation and determines the person most responsible for the

⁹Harold Nielson, (1995), *The German Analysis and Assessment System*. Intelligence and National Security. 10(4), p 4-71

¹⁰Jack. Davis, (1996). *A Policymaker's Perspective on Intelligence Analysis*. Studies in Intelligence. 38(5), p 7-15.

corruption case. This is done so that intelligence activities can be planned carefully, measured, and more focused on what to look for in data collection (puldata) and collection of information (pulbaket). In conducting puldata and pulbaket, it can be done secretly or openly. Closed in this case means conducting puldata and pulbaket secretly without being known by others, for example by disguising themselves, sneaking or even taking data without being known by others. While openly, the Sprintug Team conducts direct interviews with the parties that have been determined in Ansas, Antug and TO. Regarding the request for data, it is also obtained from people who have direct authority openly by asking so that the source of information has A1 quality information.

When the information needed and obtained is complete, the task implementation team makes a Task Implementation Results Report (Laphastug). The Task Implementation Results Report contains a description of intelligence activities in the form of interview results, data obtained by each task implementer which will then be re-analyzed. In the laphastug, it is analyzed both from the side of the facts obtained in the field connected with the relevant legal regulations. After being analyzed, conclusions and suggestions for action are made to provide consideration to the Leadership.

The Task Implementation Result Report (Laphastug) is conducted through a case title or exposé involving prosecutors in other fields besides the Intelligence Sector to receive suggestions, input and opinions related to the Task Implementation Result, in the exposé, approval is also requested from the Head of the Intelligence Section and the Head of the District Attorney's Office regarding what steps will be taken whether the report on the results of the task implementation can be upgraded to the Judicial Intelligence Operation Stage (investigation). If the Head of the District Attorney's Office and the Exposure Participants agree with the results of the Team's task implementation, the case is requested for approval from the Head of the District Attorney's Office. After receiving approval from the Head of the Intelligence Section, approval is then requested from the Head of the District Attorney's Office to carry out the Judicial Intelligence Operation (investigation) activity.

In the field of intelligence, investigative activities are usually referred to as intelligence operations or Opsin. Opsin is an effort, activity and action carried out based on a plan to achieve a specific detailed goal outside of the continuous goal in the relationship of space and time that is set and which is carried out on the basis of the orders of the leader. With the approval of the Head of Intelligence Section and the Head of the District Attorney's Office, the Head of the District Attorney's Office issues an Intelligence Operation Order (SprintOps). This Intelligence Operation is carried out to deepen the results of the implementation of the tasks that have been carried out. In this Intelligence Operation, formal and material actions have occurred in the crime that is being traced and investigated. In the Intelligence Operation activity, the SprintOps Team can officially summon the parties concerned to be asked for information at the Prosecutor's Office.

Information from related parties that is needed can be examined in more detail. The results of the information mentioned are stated in the Minutes of the Request for Information which will later be processed and analyzed legally by the SprintOps Team based on the BA Request for Information.

After the process of collecting information through inquiries and collecting supporting data in the Intelligence Operation, the team then makes an Intelligence Operation Result Report. The information obtained is poured out, processed and analyzed. After completion, conclusions and recommendations for action are made. If it is true that there is indeed an indication of corruption, in the recommendation for action, the Intelligence Division delegates the Judicial Intelligence Operation Result Report (Lapopsin) to the Special Crimes Division for further processing after conducting a case title (exposure) and obtaining approval from the Head of the District Attorney's Office.

The two main actions carried out by the Attorney General's intelligence, namely collection and analysis, must be seen from a broader perspective, namely one that links these activities to the needs of decision makers and the use of finished intelligence products. This is done through the concept of the intelligence cycle, namely a process by which information is obtained, transformed into intelligence products and made available to decision makers. The intelligence cycle generally consists of five steps: (1) planning and directing; (2) collection; (3) processing; (4) production and analysis; and (5) dissemination.¹¹

In conducting the sting operation, there are two techniques used by the Prosecutor's Office, namely wiretapping and entrapment. The judge's considerations in several Constitutional Court decisions regarding wiretapping include stating that the authority in Article 12 paragraph (1) letter a of the KPK Law is contrary to Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states that "Everyone has the right to protection of themselves, their families, honor, dignity, and property under their authority, and has the right to a sense of security and protection from fear to do or not do something that is a basic human right." However, the Constitutional Court explained that the right to privacy is not part of the rights that cannot be reduced under any circumstances (nonderogable rights) so that the state can limit the implementation of these rights by using the Law, as regulated in Article 28J paragraph (2) of the 1945 Constitution. The Constitutional Court mandated the formation of one regulation on the mechanism and procedure for wiretapping which contains the following requirements:

- a. There is an official authority designated in the law to grant permission for wiretapping, according to the law, the Prosecutor's Office is given the authority to carry out wiretapping;

¹¹Loch K.Johnson, (2002).Bombs, Bugs, Drugs and Thugs: Intelligence and America's quest for security. New York: New York University Press. p 187

- b. There is a guarantee of a definite time period in carrying out wiretapping;
- c. Restrictions on handling of wiretap material; and
- d. Restrictions on who can access wiretapping.

The Criminal Procedure Code has provided a legal basis for conducting a sting operation as stipulated in Article 1 point 19 of the Criminal Procedure Code, namely "Caught red-handed is the arrest of a person while committing a crime, or immediately after the crime has been committed, or shortly after being called out by the public as the person who did it, or if shortly afterward an object is found on him which is strongly suspected of having been used to commit the crime which indicates that he is the perpetrator or has participated in or assisted in committing the crime."

According to Eddy OS Hiariej, in the context of proof in court, evidence obtained through a Sting Operation is very clear, accurate and definite. A Sting Operation is very effective in proving crimes that are difficult to prove, including corruption crimes, because the evidence can be obtained directly. Proof of criminal cases is in accordance with the postulate *In Criminalibus Probantiones Bedent Esse Luce Clariores*, which means that in criminal cases the evidence obtained must be brighter than light, because through a Sting Operation, clear, clear, accurate and irrefutable evidence is obtained, not just based on suspicion. A Sting Operation is certainly preceded by a series of wiretapping actions that have been carried out over a certain period of time. The results of wiretapping are basically initial evidence of a crime if there is a match between one piece of evidence and another (Corroborating Evidence). This means that the case is ready to be processed criminally because it has at least two pieces of evidence. In the context of evidentiary power, the Hand Catch Operation can be said to fulfill perfect proof (*Probatio Plena*) which means that the evidence no longer raises doubts about the perpetrator's involvement in a crime. However, judges in criminal cases are not absolutely bound by any evidence, but the Hand Catch Operation can at least eliminate such doubts.

4. Conclusion

Intelligence Operation for Hand Catch execution is an effort by the Prosecutor's Office to catch someone red-handed who is suspected of being a perpetrator of corruption. An operation that is secretive, measured and rarely the target of the operation can survive the accusation because it is based on a long process when the Prosecutor's Office "sniffs" out indications of corruption. Related to the Prosecutor's Intelligence analysis, After the Task Order is issued and signed by the Head of the District Prosecutor's Office, the Prosecutor's Intelligence section carries out a series of actions by making a Target Analysis (*Ansas*), Task Analysis (*Antug*) and Operation Target (TO). In the field of intelligence, investigative activities are usually called intelligence operations or *Opsin*.

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