

PROTECTION OF THE RIGHT TO PRIVACY REGARDING THE AUTHORITY TO WIRETAP BY THE PROSECUTOR'S OFFICE BASED ON THE HUMAN RIGHTS-BASED APPROACH

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Abstract

This article examines the legal basis of prosecutorial interception authority and its alignment with the protection of the right to privacy through a Human Rights-Based Approach (HRBA). Using a normative juridical method with statutory and conceptual approaches, the study evaluates the interception provisions in the Prosecutor's Law and sectoral regulations. The findings indicate that prosecutorial interception remains declarative and lacks operational procedures that meet the HRBA principles of legality, necessity, proportionality, and accountability. This gap poses privacy risks and highlights the urgency of enacting a comprehensive Interception Act to ensure accountable and rights-compliant implementation.

KEYWORDS

Interception, Prosecution, HRBA



Introduction

Law enforcement in a modern constitutional state requires a balance between the effectiveness of enforcement and respect for human rights, particularly the right to privacy.¹ Indonesia, as a state governed by the rule of law pursuant to Article 1(3) of the 1945 Constitution, places the protection of Human Rights as a fundamental principle that must be reflected in every state action, including intrusive measures such as wiretapping. In this context, the existence of wiretapping powers must be strictly framed as it relates directly to the constitutional rights of citizens as stipulated in Article 28G(1) of the 1945 Constitution, which guarantees protection of the right to security and private life.² Consequently, changes to the powers of law enforcement agencies to carry out wiretapping have become a crucial issue, both in theory and in practice, particularly when such powers are granted to an institution that plays a strategic role in the criminal justice process, namely the Public Prosecutor's Office.³

Law No. 11 of 2021, which amends Law No. 16 of 2004, introduces fundamental changes by granting the Public Prosecutor's Office new powers to carry out wiretapping under Article 30C(i). These powers mark a significant shift in the role of the Public Prosecutor's Office, which has traditionally performed prosecutorial functions but is now also granted access to intrusive investigative techniques. However, to date, there are no detailed regulations regarding the procedures for wiretapping by the Public Prosecutor's Office as mandated by law, given that such specific regulations have not yet been established.⁴ The fragmentation of wiretapping

¹Brianta Petra Ginting, Atma Suganda, and Sineerat Suasungnern, "THE CONCEPT OF THE RULE OF LAW IN THE INDONESIAN" 3, no. 12 (2024).

²Stakeholder Report and Universal Periodic Review, "The Right to Privacy in the Indonesia Stakeholder Report Universal Periodic Review 27 Th Session – Indonesia," no. September (2016): 3.

³ Mochamad Zaidan, "Peran Strategis Kejaksaan Republik Indonesia Dalam Penegakan Hukum Pidana : Antara Kewenangan, Tantangan, Dan Reformasi" 2 (2025).

⁴Rofiq Hidayat, "Kewenangan Penyadapan Kejaksaan Harus Diatur Ketat Dan Terukur," hukumonline.com, 2021,

regulations across various sectoral laws, such as the ITE Law, the Telecommunications Law, and the Narcotics Law, further highlights the potential for legal uncertainty that directly impacts the legitimacy of the Prosecutor's Office's wiretapping powers. This situation creates an urgent need to reassess the alignment of these powers with the principles of the rule of law and respect for human rights.

The lack of clarity regarding procedures, limits on authority, licensing mechanisms and oversight of wiretapping by public prosecutors has the potential to give rise to the risk of *abuse of power*.⁵ Specifically, this lack of clarity could lead to potential violations of Article 28G(1) of the 1945 Constitution, which guarantees the right to communication, information, and the protection of individual privacy; the principles of legality and legal certainty as set out in the Criminal Procedure Code; and the internal provisions of the Prosecutors' Code of Ethics, which restrict the use of authority solely for the purposes of law enforcement. Furthermore, the absence of a clear authorisation mechanism blurs the boundaries of institutional authority, meaning that wiretapping can be carried out without adequate standard procedures, accountability, and oversight. This is all the more relevant given that the Public Prosecutor's Office is an institution within the executive branch yet performs judicial functions; consequently, the potential for a concentration of power without adequate oversight mechanisms poses a serious concern for the protection of privacy rights and the right to a *fair trial*.⁶ From the perspective of *the Human Rights-Based Approach* (**"HRBA"**), every wiretapping operation must comply with the principles of legality, legitimacy, necessity, proportionality, and

<https://www.hukumonline.com/berita/a/kewenangan-penyadapan-kejaksaan-harus-diatur-ketat-dan-terukur-lt61975526b4c95/?page=1>.

⁵Rudi Natamiharja, Febryani Sabatira, and Desia Rakhma Banjarani, "BALANCING TWO CONFLICTING PERSPECTIVES ON WIRETAPPING ACT : Rights to Privacy and Law Enforcement," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 1 (2022), <https://doi.org/10.30631/alrisalah.v22i1.1226>.

⁶Kiki Anggela Sari, Meri Yarni, and Adeb Davega Prasna, "KEWENANGAN KEJAKSAAN SEBAGAI LEMBAGA PEMERINTAHAN DI BIDANG YUDIKATIF," *Limbago: Journal of Constitutional Law* 4, no. 2 (2024).

accountability.⁷ Where specific regulations are absent, safeguards regarding these principles become weak and may threaten the protection of human rights. Therefore, research into the prosecution service's wiretapping powers is necessary to assess their compliance with human rights principles and to fill the research gap regarding the relationship between prosecutorial powers, intrusive measures, and the protection of privacy.

Previous research indicates a relevant but as yet incomplete direction for further development. Agung Munandar et al. (2023), in "Analysis of Wiretapping by the Public Prosecutor's Office in the Enforcement of Corruption Law",⁸ Belmento. (2022), in "Strengthening the Prosecutor's Office's Authority to Conduct Wiretapping in Corruption Cases under Law No. 16 of 2004 on the Prosecutor's Office"⁹ and Debby Jayanti et al. (2022), in "The Prosecutor's Authority to Conduct Wiretapping in the Criminal Justice Process",¹⁰ examines the authority of the Public Prosecutor's Office to conduct wiretapping and highlights issues of legal uncertainty; however, this study remains limited to structural and normative aspects without assessing its implications for the right to privacy. Rahmat Madani et al. (2022), in "The Impact of Wiretapping on Corruption Cases",¹¹ , examine the effectiveness of wiretapping in proving corruption offences, but do not highlight human rights aspects or control mechanisms. On the other hand, research such as "*A Human Rights-Based Communication Wiretapping*

⁷Gunawan Widjaja, "A HUMAN RIGHTS-BASED COMMUNICATION WIRETAPPING POLICY MODEL FOR LAW ENFORCEMENT IN INDONESIA" 3, no. 6 (2025).

⁸A Munandar, S Nawi, and A Razak, "Analisis Tentang Penyadapan Oleh Kejaksaan Dalam Penegakan Hukum Tindak Pidana Korupsi," *Innovative: Journal Of Social Science Research* Volume 3, no. 2 (2023), <http://j-innovative.org/index.php/Innovative/article/view/3181%0Ahttp://j-innovative.org/index.php/Innovative/article/download/3181/2261>.

⁹Belmento, "PENGUATAN KEWENANGAN KEJAKSAAN DALAM MELAKUKAN PENYADAPAN TINDAK PIDANA KORUPSI MENURUT UNDANG-UNDANG NOMOR 16 TAHUN 2004 TENTANG KEJAKSAAN," *Lex Librum: Jurnal Ilmu Hukum* 8, no. 2 (2022).

¹⁰Debby Jayanti, Usman, and Sudarti Elly, "Kewenangan Jaksa Melakukan Penyadapan Dalam Proses Peradilan Pidana," *Jurnal Sains Sosio Humaniora* 6, no. 1 (2022).

¹¹Rahmat Madani and Datir Siregar, "PENGARUH PENYADAPAN TERHADAP PERKARA KASUS TINDAK PIDANA KORUPSI," *Jurnal Ilmiah Publika* 10, no. 2 (2022).

Policy Model for Law Enforcement in Indonesia” by Gunawan Widjaja et al. (2025),¹² , provides a theoretical foundation regarding the HRBA but does not specifically address the Public Prosecutor’s Office as the institution that now holds wiretapping authority. Furthermore, the comparative study *“Surveillance and Implications of Wiretapping in International and National Law: a Comparative Study of Arrangements and Practices”*, also authored by Gunawan Widjaja et al. (2025),¹³ , outlines international standards regarding wiretapping but does not link them to the institutional dynamics of the Prosecutor’s Office and the new powers under Law No. 11 of 2021. Thus, this compilation of previous research indicates that the issue of the relationship between the Prosecutor’s wiretapping powers and the protection of privacy within the framework of human rights still leaves substantial scope for further study.

Based on this synthesis, there are several gaps that have not been addressed by previous studies. *Firstly*, no research has directly analysed the prosecution’s wiretapping powers following the enactment of Law No. 11 of 2021 from the perspective of *the Human Rights-Based Approach (“HRBA”)*. *Secondly*, no study has yet, from a human rights-based approach (), linked the prosecution’s wiretapping powers to the principles of *a fair trial*, the burden of proof, and the potential imbalance of power between the prosecutor and the suspect in the criminal justice process. *Thirdly*, no study has yet evaluated the absence of control mechanisms, wiretapping authorisations, and external oversight of prosecutors from a privacy protection perspective. *Fourthly*, comparative studies have not been used to assess whether the Prosecutor’s wiretapping powers are consistent with international standards regarding restrictions on the right to privacy as set out in *the International Covenant on Civil and Political Rights*

¹²Widjaja, “A HUMAN RIGHTS-BASED COMMUNICATION WIRETAPPING POLICY MODEL FOR LAW ENFORCEMENT IN INDONESIA.”

¹³Gunawan Widjaja, “SURVEILLANCE AND IMPLICATIONS OF WIRETAPPING IN INTERNATIONAL AND NATIONAL LAW: A COMPARATIVE STUDY OF ARRANGEMENTS AND PRACTICES,” *Jurnal Komunikasi* 3, no. 6 (2025).

(“ICCPR”) and the practices of other countries. It is this gap that makes this research of high urgency, both to enrich academic discourse and to meet the need for policy formulation consistent with the principles of the rule of law.

In light of this gap, this study aims to analyse the wiretapping powers of the Public Prosecutor’s Office under Law No. 11 of 2021 through *a human rights-based approach*. This study seeks to assess the extent to which these powers comply with the principles of legality, proportionality, necessity, and accountability, as well as the impact of these powers on the protection of the right to privacy and the right to *a fair trial* within the criminal justice system. Through this analysis, this study is expected to make a theoretical contribution to the development of research on the relationship between law enforcement powers and human rights, whilst offering a conceptual basis for the formulation of more comprehensive, accountable, and nationally and internationally human rights-compliant regulations on wiretapping by the Public Prosecutor’s Office. Against this background, this research focuses on answering two main questions, namely: (1) *what is the legal review of the Prosecution Service’s wiretapping powers?* (2) *how is the right to privacy protected in relation to the Prosecution Service’s wiretapping powers based on a human rights-based approach?* These questions are formulated to address the conceptual and practical challenges of the ‘ ’ arising from the expansion of the Prosecutor’s Office’s wiretapping powers, as well as the urgent need for guarantees of the right to privacy that are consistent with the principles of *the Human Rights-Based Approach*, so that the law enforcement process remains within constitutional boundaries and respects the dignity of the individual.

Method

The research method employed in this article is normative legal research, treating the law as a written norm that is analysed to assess the

authority of the Public Prosecutor's Office to carry out wiretapping and its implications for the protection of the right to privacy. This study adopts a legislative, conceptual and comparative approach. The statutory approach involves examining various regulations relating to wiretapping powers, including Law No. 11 of 2021 on the Public Prosecutor's Office of the Republic of Indonesia, Law No. 11 of 2008 on Electronic Information and Transactions and its amendments, Law No. 19 of 2019 on the Corruption Eradication Commission, Law No. 35 of 2009 on Narcotics, Law No. 5 of 2018 on the Eradication of Terrorism, Law No. 17 of 2011 on State Intelligence, Law No. 1 of 2023 on the National Criminal Code, and Law No. 20 of 2025 on the Code of Criminal Procedure.

A conceptual approach is used to examine the concept of the right to privacy and the principles of *the Human Rights-Based Approach* (HRBA), whilst a comparative approach is used to compare national legal frameworks with international standards such as *the International Covenant on Civil and Political Rights* (ICCPR), *the Universal Declaration of Human Rights* (UDHR), the case law of *the European Court of Human Rights*, and *the global Necessary and Proportionate Principles*. The legal materials used consist of primary legal sources in the form of legislation and international human rights instruments, secondary legal sources in the form of relevant books and academic articles, as well as tertiary legal sources such as legal dictionaries and encyclopaedias to clarify terminology.¹⁴ All these legal materials were analysed qualitatively through legal interpretation and systematisation techniques to produce a comprehensive argument regarding the research problem formulation.

¹⁴I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (PrenadaMedia, 2017).

Results and Discussion

1. A Legal Review of the Prosecutor's Authority to Conduct Wiretapping

The Attorney General's Office of the Republic of Indonesia holds strategic powers within the national criminal justice system, including the power to carry out wiretapping as one of the instruments of law enforcement.¹⁵ This authority stems from the institutional design of the Attorney General's Office, which positions it as an institution exercising prosecutorial functions independently, as stipulated in Article 2(1) of Law No. 11 of 2021 on the Attorney General's Office of the Republic of Indonesia (**"Attorney General's Office Law"**). This provision indicates that the Attorney General's Office is obliged to carry out its law enforcement role without interference from other branches of government; consequently, the scope of special measures, including wiretapping, is positioned as part of the law enforcement function requiring strong legal legitimacy. On this basis, an examination of the authority of prosecutors to conduct wiretapping must begin with a fundamental understanding of the position of the Attorney General's Office within the national legal structure, as functional legitimacy is a prerequisite for the validity of any intrusive action that has the potential to restrict the rights of citizens.

The Public Prosecutor's Office carries out various duties in the criminal justice system as set out in Article 30(1) of the Public Prosecutor's Office Act, including prosecution, enforcement of judgments, supervision of suspended sentences, investigation of certain criminal offences, and the completion of case files through supplementary investigations. However, the power to carry out wiretapping is not explicitly provided for in Article 30. This indicates

¹⁵Errika Noer Diana, Muhammad Andri, and Tri Susilowati, "Peran Jaksa Dalam Perkara Tindak Pidana Korupsi Berdasarkan Undang-Undang Pemberantasan Tindak Pidana Korupsi," *Justicia Journal* 14, no. 1 (2025).

that wiretapping is not a general authority of the prosecutor in the criminal field, but rather a special authority that may only be exercised if expressly provided for in sectoral legislation. This framework is further clarified in Article 30C(i) of the Attorney General's Office Act, which states that the Attorney General's Office may conduct wiretapping only on the basis of specific legislation governing wiretapping. This formulation creates an important limitation: prosecutors cannot carry out wiretapping based on a broad interpretation of their prosecutorial or investigative powers, but only when other legislation provides an explicit mandate to do so.¹⁶

These special powers are closely linked to the law enforcement intelligence functions of the Public Prosecutor's Office. Under Article 30B of the Public Prosecutor's Office Act, the Public Prosecutor's Office is granted the authority to carry out investigative, security and intelligence-gathering functions for the purposes of law enforcement. Although this article does not mention the word **“wiretapping”**, the preventive, detective and strategic nature of intelligence functions could, in theory, involve mechanisms for obtaining electronic information. However, the existence of Article 30C(i) serves as a clear restriction that the use of wiretapping in intelligence functions cannot be carried out without a specific legal basis. Thus, from a legal standpoint, the intelligence functions of the Public Prosecutor's Office cannot serve as a standalone basis for conducting wiretapping without a sector-specific legal framework. The principle of legality in criminal procedure law requires that intrusive measures such as wiretapping be governed by clear, measurable norms and authorised by an official permit.¹⁷

This normative framework needs to be explored in greater depth by examining the sectoral legislation that permits the public prosecutor's

¹⁶Fransicus Xaverius Suminto Pujiraharjo, “Kewenangan Jaksa Dalam Penyidikan Terhadap Pelaku Tindak Pidana Korupsi,” *Jurnal Hukum Inkracht* 5, no. 2 (2025).

¹⁷Al Wisnubroto and G Widiartana, *Menuju Hukum Acara Pidana Baru* (Bandung, Jawa Barat: Penerbit PT CITRA ADITYA BAKTI, 2021).

office to carry out wiretapping. Law No. 11 of 2008 on Electronic Information and Transactions (**“the EIT Law”**) provides a general basis for the legitimacy of wiretapping for law enforcement purposes. Article 31(3) of the ITE Law states that interception or wiretapping does not constitute an unlawful act if carried out for the purposes of law enforcement at the request of the police, the public prosecutor’s office, or another institution authorised by law. This provision confirms that the public prosecutor’s office is one of the institutions that may request interception, but it still requires the existence of other legislation that specifically grants such authority.¹⁸ This provision reinforces the principle that the ITE Law does not grant prosecutors independent authority to carry out interception, but rather provides a legal framework whereby interception carried out by investigators or other technical agencies remains lawful provided it is based on specific authority granted by law.¹⁹

The authority to conduct wiretapping, which may explicitly relate to the role of the Public Prosecutor’s Office, arises in relation to certain criminal offences that allow for investigators other than the police. In the case of corruption offences, for example, Law No. 19 of 2019 on the Corruption Eradication Commission (**“KPK Law”**) explicitly grants wiretapping powers to the Corruption Eradication Commission under Article 12. This authority does not apply to prosecutors because the law stipulates that the conduct of wiretapping is entirely subject to the oversight of the Supervisory Board of the Corruption Eradication Commission (**“KPK”**). Consequently, prosecutors do not possess specific wiretapping powers in the context of corruption offences except through the coordination mechanism with the KPK as provided for in Article 12A. This reaffirms the principle of *legality*, namely that

¹⁸Jan S. Maringka, *Reformasi Kejaksaan Dalam Sistem Hukum Nasional* (Jakarta Timur: Sinar Grafika, 2022).

¹⁹Elda Azizah Putri, Sri Rahayu, and Sahuri Lasmadi, “Tindakan Lawful Interception Oleh Penyidik Dalam Penegakan Hukum,” *PAMPAS : Journal of Criminal* 6, no. 3 (2025).

wiretapping powers in corruption offences are exclusive to specialised anti-corruption agencies and are not granted directly to the prosecution service.

Unlike in cases of corruption, under Law No. 35 of 2009 on Narcotics (**“the Narcotics Law”**), wiretapping is a power vested in investigators from the National Narcotics Agency (**“BNN”**) and police investigators pursuant to Article 75(i). Article 77 stipulates that wiretapping may only be carried out after sufficient preliminary evidence has been obtained, with the written authorisation of the presiding judge, and may be extended once. Given that the Public Prosecutor’s Office does not act as an investigator in narcotics-related criminal offences, this article does not grant wiretapping powers to prosecutors. However, the existence of this provision is significant in a legal analysis as it demonstrates that the Indonesian legislature has established strict, measured, and restrictive regulations regarding wiretapping (). The detailed provisions concerning the conditions for authorisation, duration, and accountability mechanisms indicate that wiretapping is viewed as an action with significant potential to infringe upon the right to privacy, and must therefore be managed within strict legal boundaries.

Under the regime governing terrorist offences, Law No. 5 of 2018 on the Eradication of Terrorist Offences (**“the Terrorism Law”**) establishes wiretapping as a power of the investigating officer, to be exercised pursuant to an order issued by the president of the district court, as provided for in Article 31(2). Provisions regarding a maximum duration of one year, extensions, and reporting obligations indicate the existence of a multi-layered judicial control mechanism. As with the Narcotics Act, the role of the Public Prosecutor’s Office does not include wiretapping powers during the investigation stage.²⁰ However, this provision is relevant to the legal analysis of wiretapping powers by

²⁰Wahyu Ichram et al., “Peran Kejaksaan Dalam Upaya Pemberantasan Tindak Pidana Narkotika Di Wilayah Hukum Kejaksaan Negeri Mandailing Natal,” *Jurnal Penelitian Multidisiplin Bangsa* 1, no. 11 (2025).

prosecutors, as it demonstrates that sectoral legislation provides normative standards that can serve as a benchmark should future legislation grant wiretapping powers to the Public Prosecutor's Office. Should wiretapping powers be granted to prosecutors, the minimum standards must be equivalent to the wiretapping regime for terrorist offences, which requires court authorisation, time limits, and periodic reporting.

Law No. 17 of 2011 on State Intelligence (**“the Intelligence Law”**) provides a different perspective on wiretapping practices within the Indonesian legal system. Article 31 grants the State Intelligence Agency (**“BIN”**) the authority to carry out wiretapping against specific targets that pose a threat to national security. However, intelligence wiretapping remains restricted by Article 32, which requires an order from the Head of BIN and a maximum duration of six months. This provision demonstrates that even wiretapping conducted within the intelligence sphere must be subject to legal restrictions and strict internal authorisation mechanisms. For the purposes of analysing the prosecution service's wiretapping powers, the regulatory framework set out in the Intelligence Act indicates that every wiretapping authority, whether in the context of law enforcement or intelligence, must have internal or external control mechanisms to ensure legality, proportionality and accountability.

Law No. 1 of 2023 (**“National Criminal Code”**) also stipulates that any form of obtaining electronic information by unlawful means constitutes a criminal offence as set out in Article 258(1). However, paragraph (3) provides for an exception where such acts are carried out in accordance with the law or by virtue of an official order. This provision reinforces the principle of legality that wiretapping without a legal basis constitutes a crime, meaning that the authority of prosecutors to carry out wiretapping must be supported by clear and explicit specific provisions. This principle is important because any form of state

intrusion into citizens' privacy without a clear legal basis can be challenged through judicial review or through the criminal justice system.²¹

The regulatory framework governing wiretapping within the Indonesian legal system has also evolved through Law No. 20 of 2025 (**"KUHAP 2025"**). Article 136(1) grants investigators the authority to carry out wiretapping for the purposes of an investigation, but paragraph (2) stipulates that provisions regarding wiretapping are governed by a separate law. This highlights two key principles: *firstly*, wiretapping is recognised as an investigative measure; *secondly*, it cannot be carried out until a specific law on wiretapping is in place. The existence of this provision is consistent with the position of the Public Prosecutor's Office that the authority to conduct wiretapping may only be exercised if there is a specific law granting such a mandate.

In the context of the follow-up to wiretapping operations, Article 156 of the 2025 Code of Criminal Procedure stipulates that wiretapping must be recorded in an official report, whilst Article 163(3)(d) provides that wiretapping declared to be unlawful renders the evidence obtained inadmissible as evidence. This provision imposes an important restriction that wiretapping must not only be based on law, but must also be carried out in accordance with proper legal procedures. A breach of these procedures renders the entire outcome of the wiretapping null and void. For the Public Prosecutor's Office, this provision reinforces that the wiretapping powers they exercise, where granted on a sectoral basis, must be subject to the principle of *due process of law*.

The existence of these various legal regimes governing wiretapping reveals a general pattern whereby wiretapping measures are restrictive in nature, require authorisation from specific authorities, apply under

²¹Adithiya Diar, Billy Anggara Jufri, and Raga Samudera Widodo, "TINJAUAN FILOSOFIS ASAS ULTRA PETITA DALAM PERKARA PENGUJIAN UNDANG-UNDANG TERHADAP UNDANG-UNDANG DASAR," *Limbago: Journal of Constitutional Law* 5, no. 2 (2025).

specific conditions, are subject to time limits, and must be subject to accountability through both internal and external mechanisms. Consequently, the authority of prosecutors to conduct wiretapping must be situated within such a legal framework, as any deviation would cause these intrusive measures to lose their legal legitimacy. This model also demonstrates that Indonesian legislators have consistently avoided granting overly broad wiretapping powers to law enforcement agencies, including the public prosecutor's office.

From an academic perspective, it is abundantly clear that the position of the Public Prosecutor's Office regarding wiretapping powers remains within a passive framework; that is, it may request wiretapping or coordinate the implementation of wiretapping where the law so provides. However, the Public Prosecutor's Office does not possess independent authority to carry out wiretapping, except in situations where other legislation provides an explicit mandate.²² This limitation is significant as an implication of the principle of restricting state power in relation to privacy. Wiretapping constitutes a severe infringement of privacy; consequently, the granting of such authority to prosecutors must be undertaken with the utmost caution.²³ The inclusion of wiretapping powers in Article 30C(i) indicates that the legislature has indeed opened up the possibility of granting such powers, but their application remains dependent on the existence of sectoral legislation.

It is in this context that a number of regulatory gaps identified in previous research become relevant. Firstly, previous research has not positioned Law No. 11 of 2021 (**"the Prosecution Law"**) as the basis for the structure of the prosecution's wiretapping powers. Secondly, previous research has not compared wiretapping models within the

²²Icha Cahyaning Fitri and Alif Rizki Budi Cahyono, "Kedudukan Kejaksaan Dalam Penegakan Hukum Di Indonesia Berdasarkan Kitab Undang-Undang Hukum Acara Pidana," *National Multidisciplinary Sciences* 4, no. 3 (2025).

²³Laode Muhammad Nauval Haidar, Rahmatul Hidayati, and Parmono Budi, "PENGUNAAN ALAT BUKTI PENYADAPAN DALAM PEMBUKTIAN TINDAK PIDANA KORUPSI DI INDONESIA," *DINAMIKA : Jurnal Ilmiah Ilmu Hukum* 32, no. 1 (2021).

Indonesian legal system to assess the minimum standards when wiretapping powers are granted to the prosecution. Thirdly, there has been no study measuring the consistency of the prosecution service's wiretapping powers with the principle of legality in the National Criminal Code and the 2025 Criminal Procedure Code. Fourthly, no research has demonstrated how the prosecution service's position within the wiretapping regime highlights the need for stronger privacy control mechanisms.

This analytical framework demonstrates that the power of prosecutors to conduct wiretapping is a legal power that is limited in scope, conditional in nature, and may only be exercised in accordance with specific legislation. The provision of this power in Article 30C(i) is declaratory rather than operational, as its implementation remains dependent on other legislation. This situation creates a balance between the potential powers held by the prosecution service and the inherent limitations arising from the principle of legality. Consequently, any discussion of the power of prosecutors to conduct wiretapping cannot be separated from a discussion of the protection of the right to privacy.

2. Wiretapping and the Right to Privacy: A Review from a *Human Rights-Based Approach*

The discussion of the right to privacy establishes a conceptual framework that forms the basis for assessing the authority of law enforcement agencies to carry out surveillance. This right has evolved as part of the fundamental protection of human dignity, which requires the state to refrain from arbitrary interference in an individual's private life. Global instruments such as *the Universal Declaration of Human Rights* affirm that everyone has the right to protection from arbitrary

interference with their private life, family, correspondence, or honour.²⁴ This norm has subsequently developed into a general principle that places privacy as one of the core components of civil liberties.

A more technical interpretation of the right to privacy is set out in *the International Covenant on Civil and Political Rights* (“**ICCPR**”), particularly Article 17, which prohibits interference with privacy, correspondence and reputation, except *where provided by law*. The UN Human Rights Committee has affirmed that restrictions on this right are only permissible if established by clear legislation, accessible to the public, and containing standards of conduct that do not leave room for arbitrariness.²⁵ This framework sets an explicit limit that wiretapping, as a form of restriction on privacy, is only lawful if it is subject to the principles of legality, compliance, and *non-arbitrariness*.

The Indonesian Constitution adopts a consistent approach through guarantees of security and protection against arbitrary treatment of human honour and dignity. Furthermore, Law No. 39 of 1999 on Human Rights reinforces these guarantees by stating that every person has the right to protection of their person, family, honour, dignity and property. This provision establishes the state’s obligation to ensure that any action that may potentially infringe upon privacy must be based on clear legal provisions.

National legislation subsequently established the key principle that the right to privacy falls within the category of rights that are not absolute. The state may impose restrictions provided they are based on legitimate needs within a democratic society, for example in the context

²⁴Siti Kuraesin, Tajul Arifin, and Ine Fauzia, “Analisis Hukum Islam Terhadap Perlindungan Hak Atas Privasi Dalam Pasal 12 The Universal Declaration of Human Rights,” *Jurnal Agama Dan Hak Azazi Manusia* 14, no. 1 (2025).

²⁵Komisi Nasional Hak Asasi Manusia Republik Indonesia, *STANDAR NORMA DAN PENGATURAN NOMOR 5 TENTANG HAK ATAS KEBEBASAN BERPENDAPAT DAN BEREKSPRESI* (Jakarta Pusat: Perpustakaan Nasional, 2021).

of law enforcement.²⁶ However, such restrictions must adhere to strict principles derived from international standards, namely legality, legitimacy of purpose, and proportionality of action. Consequently, the scope of privacy restrictions in the context of wiretapping must remain within measurable limits.

This conceptual framework is relevant for assessing the wiretapping powers held by the Public Prosecutor's Office, as without a clear procedural basis, restrictions on privacy may become practices that potentially violate human rights. The absence of technical procedural rules in a number of national provisions indicates a risk of legal uncertainty that runs counter to international principles regarding the right to privacy. Therefore, a comprehensive understanding of the concept of privacy serves as the starting point for evaluating the alignment of the prosecution service's wiretapping powers with human rights standards.

The Human Rights-Based Approach (HRBA) presents a paradigm that places human rights at the core of all state policies and practices, including law enforcement. International *frameworks* such as *the United Nations Development Programme* define the HRBA as an approach that ensures all state actions respect, protect and fulfil individual rights.²⁷ In the context of wiretapping, this approach requires that any restriction on privacy be assessed through objective parameters and based on human rights principles.

a. *The Principle of Legality*

The principle of *legality* is the first element of the HRBA, serving to assess whether a restriction on rights, including wiretapping, has

²⁶Lisda Ariany and Perdana Sandi, "LIMITATIONS OF FREEDOM OF SPEECH IN INDONESIA FROM A HUMAN RIGHTS PERSPECTIVE," *Jurnal Hukum Lex Generalis* 5, no. 12 (2025).

²⁷Nurul Fatimah Khasbullah, "Framework for the Implementation of the UN Guiding Principles on Business and Human Rights for the Protection of Women's Rights in Business Activities in Indonesia," *International Law Discourse in Southeast Asia* 1, no. 2 (2022).

a clear and verifiable legal basis.²⁸ The legal basis must include limitations on authority, implementation procedures, authorisation mechanisms, and oversight. The absence of these elements not only creates the risk of human rights violations, but also gives rise to legal uncertainty that undermines the legitimacy of law enforcement actions.

b. The Principle of *Necessity*

The principle of *necessity* then requires the state to demonstrate that wiretapping is a last resort that is strictly necessary to achieve law enforcement objectives.²⁹ Within the framework of the HRBA, wiretapping must not be a routine measure; it is only permissible when there are no other adequate alternatives. This criterion demands a rigorous assessment to ensure that restrictions on privacy are not excessive.

c. The Principle of *Proportionality*

The principle of *proportionality* complements the evaluation framework by assessing the balance between the objectives of surveillance and the impact of the intervention on individual privacy.³⁰ A surveillance measure must be proportionate in terms of its scope, duration and the type of data accessed. Surveillance that is not strictly limited has the potential to violate the very essence of privacy and opens the door to abuse of authority. This principle is particularly important in assessing the prosecution service's surveillance practices, given the risk of overlapping authority with other institutions.

²⁸Mela Sri Ayuni et al., "The Principle of Legality in the Perspective of Human Rights Asas Legalitas Dalam Perspektif Hak Asasi Manusia," *Jurnal Ruang Hukum* 1, no. 2 (2022), <https://doi.org/https://doi.org/10.58222/juruh.v1i2.264>.

²⁹Leszek Leszczyński, "Reference to Criterion of Necessity in Democratic Society in the European Convention on Human Rights: Context of Legal Interpretation and Jurisdictional Role," *Studia Iuridica Lublinensia* 32, no. 4 (2023), <https://doi.org/10.17951/sil.2023.32.4.81-96>.

³⁰Andrii Kubko et al., "The Principle of Proportionality in the Restriction of Human Rights during the War in Ukraine," *Amazonia Investiga* 13, no. 82 (2024), <https://doi.org/https://doi.org/10.34069/ai/2024.82.10.11>.

d. The Principle of *Foreseeability*

The principle of *foreseeability* requires that the law enables individuals to understand under what circumstances wiretapping may be carried out.³¹ This principle is an integral part of the principle of legality (*nullum crimen sine lege*) in criminal law, whereby the limits of wiretapping powers must be explicitly regulated so that citizens can predict when and how wiretapping is carried out. In the context of the prosecution's wiretapping powers, this principle serves as a significant indicator for assessing the adequacy of privacy protection within the Indonesian legal framework.

Discussions on global standards for privacy protection outline states' obligations to limit interference with private communications, including through wiretapping. The international framework establishes objective criteria that must be met to ensure such restrictions do not violate human rights. An assessment of the wiretapping powers of the public prosecutor's office in Indonesia requires comparison with international standards to determine the extent to which national legislation and practices comply with universal principles regarding privacy protection.

Regional instruments such as *the European Convention on Human Rights* (“ECHR”) provide comprehensive standards for assessing restrictions on the right to privacy. Article 8 stipulates that everyone has the right to respect for their private life and correspondence, and restrictions are only permitted if they are “*necessary in a democratic society*”.³² This formulation has become a global benchmark because it has generated a rich and consistent body of case law, particularly in the context of surveillance carried out by law enforcement agencies.

Landmark rulings such as *Malone v. United Kingdom* confirm that interception without a clear legal basis violates Article 8 of the ECHR.

³¹Amara Okoro, “Examining the Relationship between Human Rights Laws and Government Accountability in Nigeria,” *International Journal of Law and Policy* 9, no. 2 (2024).

³²European Court of Human Rights and Council of Europe, *European Convention on Human Rights*, 1950.

The Court held that national law must provide clarity regarding the powers, authorisation procedures, limits on the scope of interception, the duration of interception, and oversight mechanisms.³³ This principle of ‘ ’ serves as an international benchmark that states must not allow surveillance powers to remain in a grey area.

Another ruling, *Weber and Saravia v. Germany*, sets out six minimum elements that must be regulated in national law: (1) a definition of the categories of persons subject to interception, (2) the scope of communications that may be intercepted, (3) limits on the duration of interception, (4) authorisation procedures, (5) data storage and destruction, and (6) independent oversight.³⁴ These standards require surveillance regulations that are strictly defined so as not to leave room for abuse.

Another global instrument comes from *the United Nations Special Rapporteur on the Right to Privacy*, who has issued various thematic reports on digital surveillance and wiretapping. These reports emphasise that interception must be carried out in accordance with laws that are “*accessible, precise, and foreseeable*”, and is only permissible in the context of legitimate interests such as national security or law enforcement that cannot be achieved by other means.³⁵ These standards emphasise that states must avoid forms of mass surveillance as they have the potential to violate the principles of *necessity* and *proportionality*.

³³Nevena Aljinović, “THE IMPACT OF THE DECISIONS AND PRINCIPLES OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE REGULATION OF THE INSTITUTE OF SPECIAL EVIDENTIARY ACTIONS IN THE UNITED KINGDOM WITH SPECIAL EMPHASIS ON THE INTERCEPTION OF COMMUNICATIONS,” *PRAVNI VJESNIK* 38, no. 2 (2022).

³⁴Tereza SVOBODOVÁ, “RECALIBRATING LIBERTY AND SECURITY: HUMAN RIGHTS CHALLENGES IN THE AGE OF MASS SURVEILLANCE,” *1st International Congress on Law and the Future of Global Justice*, 2025, <https://doi.org/https://doi.org/https://doi.org/10.55843/ICL2025cong117s>.

³⁵Ivanets I.P., “THE PRINCIPLE OF INADMISSIBILITY OF ARBITRARY INTERFERENCE INTO THE SPHERE OF PERSONAL LIFE OF AN INDIVIDUAL,” *Scientific Bulletin of Uzhhorod National University. Series: Law* 1, no. 88 (2025), <https://doi.org/10.24144/2307-3322.2025.88.1.39>.

International guidelines such as *the Johannesburg Principles on National Security, Freedom of Expression and Access to Information* emphasise that restrictions on the right to privacy and freedom of expression may only be imposed where strictly necessary to protect national security and in accordance with strict, pre- d laws.³⁶ These principles reinforce the concept that wiretapping should not be a routine practice, but rather an extreme measure that must be accompanied by strong justification.

In the digital age, global standards also refer to *the International Principles on the Application of Human Rights to Communications Surveillance*, which extend human rights parameters to electronic interception. These principles affirm that any interception must meet the following criteria: *legality, legitimate aim, necessity, adequacy, proportionality, due process, user notification* (with certain exceptions), *transparency*, and *public oversight*.³⁷ These standards indicate that surveillance must be strictly limited and overseen by an independent body.

Legislation such as *the Investigatory Powers Act 2016* in the UK demonstrates how surveillance is regulated in detail through a ‘double lock’ authorisation mechanism, namely approval by a minister and an independent judge.³⁸ Furthermore, the UK has an *Investigatory Powers Commissioner* who provides external oversight.³⁹ This regulation demonstrates that surveillance may be carried out, but must be strictly

³⁶Luka Martin Tomažič, “Freedom of Expression on the Internet and National Security in Europe : Liberty and Basic Goods,” *Journal of the National Domain Registry* 1 (2024), <https://doi.org/10.60097/DOTPL/192648>.

³⁷Foram Joshi, “Digital Privacy Vs . State Surveillance : Balancing Fundamental Rights in Cyber Investigations,” *International Journal for Multidisciplinary Research (IJFMR)* 7, no. 5 (2025): 1–7, <https://doi.org/10.36948/ijfmr.2025.v07i05.59306>.

³⁸David Anderson, *INDEPENDENT REVIEW OF THE INVESTIGATORY POWERS ACT 2016*, 2023.

³⁹Ubadike Obunike Arinze et al., “Data Privacy and Public Surveillance in the UK : A Legal Perspective Using IRAC Framework,” *International Journal of Research and Innovation in Applied Science (IJRIAS)* 10, no. 5 (2025), <https://doi.org/10.51584/IJRIAS.2025.100500040>.

limited and subject to independent oversight to ensure it does not infringe upon privacy.

In the United States, legislation such as *the Foreign Intelligence Surveillance Act* requires authorisation from *the Foreign Intelligence Surveillance Court* (“**FISC**”).⁴⁰ Although there has been criticism regarding the lack of transparency, the existence of a specialised court demonstrates that surveillance must undergo a structured legal process. This model illustrates that judicial oversight mechanisms have become a global standard that democratic nations cannot ignore.

This comparison with global standards demonstrates that the existence of a detailed legal framework, an independent authorisation mechanism, and external oversight are integral elements of surveillance practices that respect human rights. An assessment of the prosecution service’s surveillance powers becomes particularly significant when these standards are set against the context of Indonesian legislation, which has yet to provide for a specific law on surveillance. The absence of technical legislation risks surveillance potentially violating the principles of *legality* and *foreseeability*.

The global framework emphasises that law enforcement agencies granted wiretapping powers must adhere to the principles of *necessity*, *proportionality* and *accountability*. The wiretapping powers of the Public Prosecutor’s Office, as set out in the law, require implementing regulations to ensure they meet these standards. Without clear regulations, wiretapping risks exceeding reasonable limits and may infringe upon the right to privacy, particularly in the context of sensitive investigations.

International human rights standards and the practices of democratic states indicate that wiretapping can only be justified through a detailed legal framework, independent oversight and strict limitations.

⁴⁰Seyed Milad Kashefi Pour Dezfuli, “Foreign Intelligence Surveillance Act in Light of the United States Fourth Amendment,” *Open Access Library Journal* 12 (2025), <https://doi.org/10.4236/oalib.1114179>.

Any analysis of the prosecution service's wiretapping powers must consider their alignment with these principles before assessing the extent to which the right to privacy can be guaranteed within the national legal system.

An analysis of the protection of the right to privacy within the national legal framework suggests that Indonesia is still in the process of aligning with international standards. Whilst Indonesia's legal framework does recognise the right to privacy as a human right, the technical regulations governing wiretapping reveal significant inconsistencies and ambiguities. This situation raises questions regarding the extent to which wiretapping powers, particularly those of the public prosecutor's office, can be exercised whilst upholding the principles of human rights as mandated by the 1945 Constitution ("**UUD 1945**") and Law No. 39 of 1999 on Human Rights ("**Human Rights Law**").

The enshrinement of human rights standards in the 1945 Constitution and the Human Rights Act demonstrates the state's commitment to respecting privacy, a sense of security, and protection from arbitrary action.⁴¹ However, this commitment remains merely declaratory, lacking adequate operationalisation within sectoral regulations. Indonesia has not yet established an integrated mechanism to regulate cross-agency surveillance, meaning the powers of each institution depend on their respective sectoral rules. This fragmentation creates a regulatory vacuum when assessing whether a surveillance operation meets the standards of *legality*, *necessity*, and *proportionality*.

The provisions on wiretapping in the Attorney General's Office Act of the Republic of Indonesia, specifically Article 30C(i), grant the Public Prosecutor the authority to carry out wiretapping "***in accordance***

⁴¹Watik Ayuningtyas, "Relasi Hukum & Hak Asasi Manusia Serta Implementasinya Di Indonesia," *Journal Global Review of Law and Human Rights* 01, no. 01 (2025), <https://idereach.com/Journal/index.php/grlhr/article/view/116>.

with specific legislation governing wiretapping". This phrase confirms that the Attorney General's Office's wiretapping powers cannot be exercised without the existence of specific legislation. However, to date, such legislation has not been enacted. This legal vacuum raises serious concerns as it grants potential powers without adequate safeguards. From a legality perspective, this situation fails to meet the standard of "*clear, accessible, and foreseeable law*".

Sector-specific regulations such as the Electronic Information and Transactions Act, the Terrorism Act, the Narcotics Act and the State Intelligence Act do indeed regulate wiretapping, but these provisions apply only to specific agencies. There is not a single provision detailing wiretapping procedures for public prosecutors. Consequently, wiretapping by the Public Prosecutor's Office lacks clear guidelines; *there is no authorisation mechanism, no procedure limiting the duration, no provisions regarding termination, and no standards for data storage and destruction*. The absence of these technical norms not only creates legal uncertainty but also contravenes international standards which require detailed rules as a prerequisite for the legitimacy of privacy restrictions.

Indonesia's legal framework has yet to fulfil key elements established by the case law of *the European Court of Human Rights*, which requires clarity regarding the scope of subjects subject to interception, the types of communications that may be intercepted, and mechanisms for independent oversight. The provisions of the Attorney-General's Office Act do not address these matters at all. From the perspective of *the Human Rights-Based Approach ("HRBA")*, this situation indicates that the principle of *legality* is not fulfilled, the principle of *necessity* is not measurable, and the principle of *proportionality* cannot be evaluated. This inconsistency demonstrates that privacy protection is not yet substantially guaranteed.

The legal uncertainty surrounding the prosecution service's wiretapping powers poses a risk of *abuse of power*. Without a judicial authorisation mechanism, wiretapping can be carried out without adequate oversight. Without regulations on duration, the intensity of interception is unlimited. Without rules on data destruction, personal information can be stored and misused. These risks violate the fundamental principles of the right to privacy and conflict with the state's obligation to protect its citizens from disproportionate intervention by state authorities.

The lack of consistency in regulations also contributes to weak institutional accountability. Without a clear oversight system, there is no body responsible for ensuring that wiretapping is carried out in accordance with procedures.⁴² There are no mechanisms for reporting, auditing or external evaluation. This not only risks privacy breaches, but also threatens the legitimacy of the Public Prosecutor's Office as a law enforcement body that should uphold the highest standards of integrity.

The state of Indonesian legislation indicates that the national legal framework is not yet adequate to guarantee privacy protection in the exercise of wiretapping powers by the Public Prosecutor's Office. The absence of technical standards, regulatory fragmentation and the lack of *oversight* mechanisms highlight a significant gap between national and global standards. This analysis serves as a basis for assessing how national regulations should be reformed to align with the principles of *the Human Rights-Based Approach*.

The absence of comprehensive technical regulations regarding the prosecution service's powers of wiretapping does not automatically eliminate the need for such measures in the law enforcement process. In practice, wiretapping continues to be used as part of the evidentiary process, particularly in cases requiring specialised information-

⁴²Oheo Kaimuddin Haris et al., "Kebijakan Hukum Pidana Terhadap Hak-Hak Pribadi Dalam Kasus Penyadapan Telepon Dan Privasi Digital," *Halu Oleo Legal Research* 7, no. 2 (2025), <https://doi.org/10.33772/holresch.v7i2.1698>.

gathering techniques. This situation highlights a gap between declaratory legal norms and the operational realities of law enforcement.

The Public Prosecutor's Office does not carry out wiretapping independently. This is due to the absence of an operational legal basis that explicitly regulates the procedures, mechanisms and limits of the authority of prosecutors to carry out wiretapping. Consequently, the need for wiretapping evidence in the evidentiary process is met through coordination with other institutions that are legally authorised to do so, such as the police or other law enforcement agencies.⁴³ Consequently, the position of the Public Prosecutor's Office is more that of a user of wiretapping results than a direct executor of wiretapping actions.

Wiretapping is generally carried out during the investigation phase, which falls within the remit of the investigating officer. In this context, the public prosecutor has no direct control over the process of obtaining information through wiretapping, but merely receives and uses the results as evidence in the prosecution process. This raises legal issues, particularly regarding the guarantees of legality and accountability of the wiretapping process itself.

An analysis of the risks of privacy rights violations in the context of the Public Prosecutor's Office's wiretapping powers is highly relevant, as weaknesses in national regulations create scope for arbitrary intervention. The absence of specific legislation on wiretapping results in a situation where interception activities lack legally enforceable limits, thereby rendering privacy protection mechanisms ineffective. This situation gives rise to systemic risk—that is, a risk not stemming from a single act by an official, but from a legal framework that permits abuses to occur without corrective mechanisms.

Preliminary analysis suggests that the absence of details regarding who may be the subject of wiretapping and what types of

⁴³Tri/APr, "Koordinasi Polisi Dan Jaksa Perlu Ada Sejak Awal Penyidikan," *hukumonline.com*, 2022, <https://www.hukumonline.com/berita/a/koordinasi-polisi-dan-jaksa-perlu-ada-sejak-awal-penyidikan-hol5563/>.

communications may be intercepted renders this power excessively broad. The absence of written standards opens the possibility that wiretapping may be carried out against individuals not directly linked to the investigation. International standards, as affirmed by *Weber and Saravia v. Germany*, require explicit limitations on the categories of persons who may be wiretapped.⁴⁴ The absence of such limitations within the legal framework of the public prosecutor's office increases the risk of irrelevant and invasive interception.

Wiretapping without judicial oversight is one of the most serious forms of privacy violation under international human rights standards. Democratic nations such as the United Kingdom and the United States employ a model of authorisation by a judge or an independent body, as seen in *the Investigatory Powers Act 2016 and the Foreign Intelligence Surveillance Act*.⁴⁵ No such safeguards are found in the prosecution service's wiretapping powers, as there are no provisions regarding judicial authorisation. The resulting risk is that wiretapping may be carried out based on internal decisions without independent authorisation to ensure objectivity.

Regulations concerning the duration of wiretapping are a key factor in assessing the proportionality of such measures. Legislation such as the Terrorism Act and the Narcotics Act sets strict time limits, ensuring that interception does not continue indefinitely. However, the prosecution service's wiretapping powers do not include provisions regarding the duration of wiretapping, extensions, or periodic reviews. This situation creates the possibility of unnecessary long-term surveillance, thereby violating the principles of *necessity* and *proportionality* that are global standards.

⁴⁴SVOBODOVÁ, "RECALIBRATING LIBERTY AND SECURITY: HUMAN RIGHTS CHALLENGES IN THE AGE OF MASS SURVEILLANCE."

⁴⁵Anderson, *INDEPENDENT REVIEW OF THE INVESTIGATORY POWERS ACT 2016*.

The absence of regulations governing the storage, destruction and use of intercepted data creates a risk of information misuse. Unlike the KPK, which is required to destroy irrelevant data under Article 12D of the KPK Act, the Public Prosecutor's Office has no such guidelines. Personal data could potentially be stored indefinitely, used for other purposes, or leaked to unauthorised parties. This risk runs counter to the principle of **“data minimisation”** recognised in international standards such as *the International Principles on the Application of Human Rights to Communications Surveillance*.⁴⁶

The absence of technical regulations increases the likelihood that wiretapping will be used for non-procedural purposes such as competition for office, political interests, or exerting pressure in civil cases. Vague provisions typically allow for broad interpretation, enabling authorities to treat wiretapping as a general investigative tool rather than a limited instrument used only when necessary. This risk is exacerbated by the absence of a mandatory proportionality test that must be carried out before wiretapping is implemented.

The lack of a clear legal basis for wiretapping and the absence of lawful procedures may undermine *the fairness* of the judicial process. Evidence obtained through wiretapping risks being deemed inadmissible if it fails to meet the standards set out in the 2025 Code of Criminal Procedure, which requires that such actions be lawful from the outset. This uncertainty not only disadvantages the suspect but also undermines the integrity of the law enforcement process, as crucial evidence may be disregarded by the judge.

Wiretapping that is not strictly limited tends to capture information from third parties unrelated to legal proceedings. The interception of digital communications almost always involves other individuals outside

⁴⁶Dev Parbhakar et al., “Human Rights in a World of Surveillance : Managing Privacy and Security Concerns,” *International Conference on Multidisciplinary Approaches for Sustainable Development (ICMASD-2025)* 32 (2025), <https://doi.org/10.52783/cana.v32.5111>.

the scope of the wiretap; without clear restrictions, third-party information may also be stored and analysed. This constitutes a serious breach of privacy according to the standards of *the European Court of Human Rights*, as wiretapping should be *targeted*, not amount to *mass surveillance*.⁴⁷

Identification of these risks indicates that structural weaknesses in Indonesia's legal framework create conditions that are prone to privacy violations in the exercise of wiretapping powers by the Public Prosecutor's Office. These risks are not speculative, but systemic in nature, as they stem from a broad definition of authority that is not accompanied by adequate technical regulations. An understanding of these systemic risks is essential to guide further evaluation of how privacy protection mechanisms should be established within the framework of *the Human Rights-Based Approach* (“**HRBA**”).

An analysis of the compatibility of the Public Prosecutor's Office's wiretapping powers with the HRBA requires a comprehensive assessment of the legal basis, operational mechanisms, and safeguards for the right to privacy available within the national legal system. This approach stems from the state's obligation to respect, protect, and fulfil human rights, including the right to privacy.⁴⁸ An HRBA-based evaluation treats wiretapping powers not merely as an instrument, but as a state action that must be subject to strict parameters to ensure that restrictions on rights are imposed in a controlled and proportionate manner.

The principle of *legality* is the first foundation to be tested under the HRBA. The assessment begins with the clarity of the legal basis for wiretapping by the Public Prosecutor's Office (), as set out in Article

⁴⁷Edoardo Celeste and Giulia Formici, “Constitutionalizing Mass Surveillance in the EU : Civil Society Demands , Judicial Activism , and Legislative Inertia,” *German Law Journal* 25, no. 3 (2024), <https://doi.org/10.1017/glj.2023.105>.

⁴⁸Jasmadi et al., “PERAN KONSTITUSI DALAM MELINDUNGI HAK ASASI MANUSIA TERHADAP PENERAPAN UNDANG-UNDANG ITE DI ERA DEMOKRASI,” *Collegium Studiosum Journal* 7, no. 1 (2024), <https://doi.org/10.56301/csj.v7i1.1314>.

30C(i) of the Public Prosecutor's Office Act. This provision states that wiretapping may only be carried out in accordance with specific legislation. However, the absence of a specific law on wiretapping means that this authority remains merely declaratory, without lawful operationalisation. Interpretative instruments such as the *UN Human Rights Committee's* report on Article 17 of the ICCPR emphasise that restrictions on the right to privacy must **be “provided by law”** that is clear, predictable, and has operational guidelines. The situation in Indonesia does not meet these criteria.⁴⁹

The principle of *foreseeability* requires that the law enables individuals to understand under what circumstances interception may take place. The provisions governing interception by the Public Prosecutor's Office do not set out standards regarding the purpose of interception, the categories of subjects, or the types of communication that may be accessed.⁵⁰ This lack of clarity not only violates the principle of legality, but also undermines the HRBA principle which regards transparency as a minimum requirement for the restriction of rights. Without *foreseeability*, the public cannot anticipate potential state intervention, thereby increasing the scope for privacy violations.

The principle of *necessity* requires the state to ensure that wiretapping is only carried out when there are no other effective alternatives. Under the HRBA, wiretapping is viewed as an intrusive measure that must be used as a last resort. However, a mechanism for assessing *necessity* is not available within the structure of the prosecution service's wiretapping powers. There is no procedure requiring proof that interception is truly necessary to achieve the

⁴⁹Elena IONESCU, “PRIVACY AND DIGITAL SURVEILLANCE IN CONTEMPORARY CONFLICTS: ASSESSING THE LEGALITY OF MASS DATA COLLECTION UNDER INTERNATIONAL LAW,” *1st International Congress on Law and the Future of Global Justice*, 2025, <https://doi.org/10.55843/ICL2025cong60i>.

⁵⁰Iwan Sofyan, “MODEL PENGATURAN KEWENANGAN PENYADAPAN OLEH KEJAKSAAN DALAM PENANGANAN TINDAK PIDANA KORUPSI,” *Philosophia Law Review* 4, no. 1 (2024), <https://doi.org/10.56591/pilar.v4i1.17962>.

objectives of the investigation. The absence of this mechanism means that wiretapping powers are potentially subject to overuse or even application in cases of low urgency.

The principle of *proportionality* requires that interception measures be proportionate to the objectives of law enforcement. Under the HRBA, proportionality is assessed in terms of the scope of interception, its duration, the volume of data collected, and its impact on the individuals being intercepted. The Indonesian legal framework does not provide guidelines regarding limitations on duration or procedures for periodic review in the context of interception by the Public Prosecutor's Office.⁵¹ The absence of such regulations renders this principle inoperable, meaning that wiretapping is potentially carried out on a broader scale than is necessary. This discrepancy indicates that the prosecution's wiretapping powers do not yet meet the minimum standards of proportionality.

Although the HRBA emphasises public participation in the law-making process, public discourse on wiretapping by the Public Prosecutor's Office is very limited. Information regarding wiretapping practices is not made available transparently, and there are no public reports on the use of these powers.⁵² The lack of public participation in the formulation of wiretapping policies indicates that the principle of *participation* is not adequately accommodated within the Indonesian legal framework.

The principle of *data minimisation*, which forms part of the HRBA in the context of digital surveillance, requires the state to collect as little data as possible and only to the extent necessary. The absence of regulations regarding the storage, destruction and distribution of data obtained through prosecution wiretaps opens up the possibility that

⁵¹Komnas HAM, *Menata Ulang RUU Penyadapan Dalam Perspektif HAM*, 2019.

⁵²Norbertus Arya Dwiangga Martiar, "Tanpa Batasan Jelas, Kewenangan Penyadapan Kejaksaan Ancam Privasi Warga," *kompas.id*, 2025, <https://www.kompas.id/artikel/kejaksaan-bisa-menyadap-warga-masyarakat-sipil-ingatkan-agar-dibuat-batasan-yang-jelas>.

such data is retained indefinitely.⁵³ The lack of guidelines on data destruction, as required in the mechanisms of other institutions, indicates that the prosecution's powers do not comply with the principles of secure and proportionate data processing.

Failure to comply with the principles of *legality*, *necessity*, *foreseeability* and *proportionality* indicates that the Public Prosecutor's Office's powers to conduct wiretapping are not yet in line with the HRBA. Violations of these four principles contribute to the potential for abuse of power and threaten the protection of the right to privacy. Under the HRBA approach, failure to meet these four principles means that the state has not fulfilled its obligation to effectively protect the human rights of its citizens.

This evaluation indicates that the legal framework and practices governing wiretapping by the Public Prosecutor's Office do not yet meet the minimum standards of human rights-based approaches. The absence of technical regulations and independent oversight mechanisms, coupled with unclear procedures, suggests that these powers have the potential to undermine the right to privacy. These findings form the basis for assessing the extent to which legal reform is required in order to strengthen human rights protection in Indonesia.

Reform of the prosecution service's wiretapping powers is an urgent necessity to ensure that law enforcement practices do not conflict with the state's obligation to protect the right to privacy. Such changes must be based on the findings of HRBA's previous analysis, particularly regarding weaknesses in the areas of legality, proportionality and oversight mechanisms. Without comprehensive reform, wiretapping powers risk becoming a repressive tool that lowers human rights protection standards.

⁵³N Suhaimi, Erwinsyahbana, and Guntur Ambey, "Kepastian Hukum Kewenangan Pemusnahan Barang Bukti Tindak Pidana Penyalahgunaan Narkotika," *Al Yasini: Jurnal Keislaman, Sosial, Hukum Dan Pendidikan* 10, no. 06 (2025), <https://doi.org/10.55102.alyasini.v10i6>.

The most fundamental reform is the enactment of a Wiretapping Act that specifically sets out standards, procedures, limitations and oversight mechanisms. The enactment of this legislation is necessary to uphold the principle of *legality*, as understood in instruments such as the recommendations of the *UN Special Rapporteur on Privacy*, which emphasise that restrictions on privacy must be based on clear, comprehensive and predictable laws.⁵⁴ This specific law must include a definition of surveillance, lawful grounds, categories of subjects subject to surveillance, and the scope of data access.

The next reform is the stipulation that any wiretapping carried out by the Public Prosecutor's Office must be authorised by a judge as a form of judicial oversight. The mechanism of judicial authorisation has become an international standard, as recommended by the *Council of Europe Commissioner for Human Rights* to ensure that interception is only carried out in cases that are truly urgent and proportionate.⁵⁵ The implementation of judicial oversight will prevent the Public Prosecutor's Office from acting as the sole authority in determining the legality of wiretapping.

The next reform involves establishing strict procedural standards regarding the application process for wiretapping, the duration of interception, restrictions on data access, and the procedures for storing and destroying information. These procedures are essential to uphold the principles of *proportionality* and *data minimisation*. These standards must restrict surveillance to specific offences, require periodic reviews, and mandate the cessation of interception once law enforcement objectives have been met. These technical regulations must also provide additional safeguards for third-party data unrelated to the case.

⁵⁴I.P., "THE PRINCIPLE OF INADMISSIBILITY OF ARBITRARY INTERFERENCE INTO THE SPHERE OF PERSONAL LIFE OF AN INDIVIDUAL."

⁵⁵Tamara Stapski and Valentina Ranaldi, "COUNCIL OF EUROPE APPROACH TOWARDS THE RIGHT TO PRIVACY IN DIGITAL DOMAIN: RECENT DEVELOPMENT," *SCIndeks Proceedings*, 2024, <https://doi.org/10.5937/PDSC24371S>.

Reforms based on the Human Rights-Based Approach (HRBA) also include a transparency obligation through the preparation of annual reports on the use of interception powers. These reports must include the number of interception requests, the number of requests granted by judges, the type of case, the duration of interception, and any findings of violations. This model of transparency has been used by bodies such as *the New Zealand Privacy Commissioner* as a form of assurance that the public can monitor the use of such highly intrusive powers.⁵⁶ Transparency reinforces the principle of participation within HRBA and fosters public trust in law enforcement.

The latest reform involves the integration of the HRBA into the internal policies of the Public Prosecutor's Office through technical guidelines, standard operating procedures (SOPs) and intensive training for prosecutors. This integration ensures that law enforcement officials not only understand the formal legal aspects, but also grasp the human rights implications of every wiretapping operation. This approach emphasises that wiretapping is not merely a tool for gathering evidence, but an action that affects the fundamental rights of citizens and must therefore be carried out with care and under strict control.

This set of recommendations demonstrates that systemic improvements are required to ensure that the prosecution service's wiretapping powers are aligned with the Human Rights-Based Approach (HRBA). Comprehensive reform will not only strengthen the legal legitimacy of wiretapping but also safeguard the integrity of the criminal justice system whilst guaranteeing every citizen's right to privacy. These efforts form a vital foundation for a more accountable, transparent and human rights-oriented law enforcement system.

⁵⁶Ben Amata, "New Zealand Security Agencies' Secrecy, Accountability, and Transparency in the Modern Era," *Secrecy and Society* 3, no. 2 (2025), <https://doi.org/10.55917/2377-6188.1088>.

Conclusion

The authority of public prosecutors to carry out wiretapping does not yet have an adequate operational basis within the Indonesian legal system. Whilst the Public Prosecution Act does provide for such authority, its implementation depends entirely on the existence of sector-specific legislation, which has not yet been enacted. An examination of other legislation, such as regulations concerning ITE, narcotics, terrorism, intelligence, the National Criminal Code, and the 2025 Criminal Procedure Code, confirms that wiretapping is always treated as an intrusive measure that is only lawful if strictly limited by rules, based on authoritative authorisation, and subject to multi-layered oversight. The absence of any provision granting the Public Prosecutor's Office independent wiretapping authority indicates that such authority remains merely declaratory in nature and, therefore, cannot yet be exercised in legal terms. Consequently, the operational scope for wiretapping by prosecutors can only be realised if the legislature enacts specific regulations providing a clear and detailed mandate.

These legal conditions have direct implications for the protection of the right to privacy when analysed through *a Human Rights-Based Approach* (HRBA). The absence of a wiretapping law means that the principles of *legality*, *foreseeability*, *necessity* and *proportionality* cannot be met, whilst the fragmentation of wiretapping regulations across sectoral laws increases the risk of uncontrolled practices. Without a judicial authorisation mechanism, limitations on the scope of interception, and guidelines on data retention, the current model of authority held by the Public Prosecutor's Office is not yet aligned with international human rights standards. Therefore, privacy protection can only be guaranteed through the enactment of a comprehensive Wiretapping Act, based on the HRBA, and providing adequate procedural safeguards. The findings of this research

underscore the urgency of enacting specific legislation as a prerequisite for ensuring that the prosecution service's wiretapping powers are exercised lawfully, accountably, and in accordance with human rights protection principles.

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