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**Critical Legal Studies on Wiretapping or Interception in the Indonesian
Legal System**

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Article	Abstract
<i>Received: Des 09, 2025; Reviewed: 2025; Accepted: 2025; Published: 2025.</i>	Critical Legal Studies (CLS) emerged as a theoretical approach that challenges traditional concepts and raises critical questions regarding justice, power, and legal structures. This study focuses on Critical Legal Studies of wiretapping or interception in the Indonesian legal system and examines how CLS can critique the wiretapping case conducted by investigators of the Komisi Pemberantasan Korupsi (KPK) under the order of Antasari Azhar. This research is a normative juridical legal study, which positions law as a set of rules or norms embodied in legislation, court decisions, legal doctrines, and other sources of law, and employs qualitative analysis. The tendency for abuse of wiretapping is highly likely due to its secret nature, and wiretapping constitutes an intrusion of somebody's privacy, even though what is intruded upon and taken by law enforcement officers cannot be physically and visibly seen, except for the recordings of individuals' conversations. Political involvement is reflected in the wiretapping case ordered by Antasari Azhar. This wiretapping became an instrument used to maintain the position of an institutional leader who was being threatened, under the pretext of facilitating the work of the KPK, although the head of the anti-corruption agency was under terror at that time. Although framed in the context of "security," it was not based on any report or suspicion that a corruption crime had occurred or would occur. In addition, the importance of legal language needs to be highlighted in this context. Keywords: <i>Critical Legal Studies, Wiretapping, Individual Conversations</i>

A. INTRODUCTION

A new theory or strong scientific evidence can change the way we perceive a particular phenomenon or concept. A legal paradigm includes the framework of thought, values, and assumptions that underlie the legal system of a society or state (Khasanah in Sulistianto, 2024). This paradigm reflects society's perspective on law, the objectives of law, and how law should be applied in daily life. Law is viewed as rules established by authorized authorities, and legal norms must be followed without considering values or morality. Once a regulation has been enacted, it is considered law, regardless of whether it is fair.

Developments in human thinking about law have increasingly progressed. The transformation of legal paradigms is an unavoidable phenomenon in societal development. Along with changes in social, political, and economic dynamics, legal paradigms have also undergone significant evolution. Critical Legal Studies (CLS) emerged as a theoretical approach offering a new understanding of law, challenging traditional concepts, and raising critical questions regarding justice, power, and legal structures.

Critical Legal Studies is a legal thought that rejects and is dissatisfied with liberal legal theories that traditionally separate law from politics and assume that law is neutral from political processes. This assumption exists because, in reality, law does not operate in a vacuum, but within a non-neutral and subjective reality. CLS rejects the view that law is separate from political, economic, social, and cultural elements, as conceptualized by Hans Kelsen through his pure theory of law, which aspires for law to be free from non-legal elements such as politics, economics, and social factors. In contrast, CLS considers that law is always intervened by interests outside law, so that law is never neutral or objective.

This means that law cannot be separated from politics because it is not formed in a value free space. The core of CLS thought lies in the reality that law is politics (law is politics), so CLS rejects and attacks the beliefs of legal positivists. CLS criticizes positive law because it has sided with politics and is never neutral (Masnun Tahir in Gojali, 2022). Legal doctrines that have been formed tend to side with those who have power, leading to the conclusion that law is flawed from its birth because it is formed through political "battles" that tend to be biased and subjective in favor of certain groups.

CLS is an analytical framework that highlights the dimensions of power and inequality underlying the legal system. In the Indonesian context, where intensive social and political changes occur, the relevance of CLS in analyzing the transformation of legal paradigms becomes increasingly important. Factors such as globalization, cultural plurality, and demands for social justice provide a rich context for understanding how law adapts and evolves.

CLS provides a powerful analytical lens to reassess wiretapping or interception not merely as a technical investigative tool, but as a legal practice embedded in power relations, political interests, and institutional survival strategies. As demonstrated in the attached document, CLS rejects the positivist assumption that law is neutral and autonomous, emphasizing instead that law is socially constructed and politically contingent. Recent CLS scholarship emphasizes that modern surveillance practices must be understood within broader structures of institutional dominance and democratic fragility, particularly in transitional democracies.

Referring to the complexity of CLS aspects and the factors for understanding and reconstructing legal thinking patterns in Indonesia, this study aims to provide a more comprehensive perspective on the dynamics of Critical Legal Studies (CLS) in the context of wiretapping or interception in the Indonesian legal system. The use of wiretapping or interception technology is a common practice by law enforcement and intelligence agencies, both as evidence in court proceedings and for intelligence activities. On the other hand, wiretapping can also be used by unscrupulous law enforcement officers to conduct actions outside law enforcement, such as in the wiretapping case conducted by investigators of the Komisi Pemberantasan Korupsi under the order of Antasari Azhar (Chairman of the KPK from 2007 to 2009), which becomes the case study in this research. Therefore, the researcher is interested in conducting research related to Critical Legal Studies on wiretapping or interception in the Indonesian legal system.

In the Indonesian context, wiretapping authority, particularly when exercised by powerful institutions such as the KPK, illustrates how legal norms may operate as instruments of governance and control, rather than as neutral mechanisms for justice. CLS thus reframes wiretapping as a site where state power, legal ambiguity, and individual rights collide. Based on the overall explanation that motivates the researcher to analyze Critical Legal Studies on wiretapping or interception in the Indonesian legal system with a case study of wiretapping carried out by investigators of the Komisi Pemberantasan Korupsi under the order of Antasari Azhar (Chairman of the KPK from 2007 to 2009), the research problems are formulated as follows :

1. How does Critical Legal Studies view wiretapping or interception in the Indonesian legal system?
2. How can Critical Legal Studies critique the wiretapping case conducted by KPK investigators under the order of Antasari Azhar?

B. MATERIALS AND METHODS

This research is a critical legal study of the school of legal formalism. This research is a normative juridical legal study, which positions law as a set of rules or norms embodied in legislation, court decisions, legal doctrines, and other sources of law, and employs qualitative analysis. The discussion in this research journal was carried out by inventorying laws and regulations related to wiretapping or interception in the Indonesian legal system. In addition, a literature study was conducted using books, journals, and online sources. The secondary data were then correlated and analyzed to determine how Critical Legal Studies views wiretapping or interception in the Indonesian legal system and how CLS can critique the wiretapping case carried out by KPK investigators under the order of Antasari Azhar (Chairman of the KPK from 2007 to 2009). The theoretical foundation of this study is Critical Legal Studies itself.

C. RESULT AND DISCUSSION

The CLS Perspective on Wiretapping or Interception in the Indonesian Legal System

Critical Legal Studies (CLS) is explained as a school or approach in legal science that seeks to evaluate and critique fundamental aspects of the legal system. This movement began in the late 1970s in the United States and influenced many countries. Duncan Kennedy, as one of the main figures in this school, explained that CLS has several distinctive characteristics :

1. Skepticism toward Legal Objectivity: Questioning the idea that law is neutral or objective, as it often reflects certain political and economic interests.
2. Political Involvement: Law cannot be separated from its supporting political and economic context and can become an instrument of power to maintain the status quo or oppress certain groups.
3. Importance of Language: Legal language is not neutral and can be used to conceal particular forms of power and domination.
4. Focus on Social Justice: Emphasizing the pursuit of social justice, considering the social and economic impacts of law, and supporting legal understanding that focuses on fair and equal outcomes.

CLS has gained its place in the development of legal thought in Indonesia. The Critical Legal Studies movement in Indonesia can be an option in building the Indonesian legal system, both in terms of substance and law enforcement. This movement can function as a filter for the process of forming legislation that is suspected of being laden with the interests of certain groups. In addition to being a requirement in the formation of state legal products, CLS can also serve as a means of public control over the state, so that the mechanism of checks and balances can function properly.

The use of wiretapping or interception as a tool to detect and раскры (uncover) cases is common in Indonesia and the results can be used as evidence in court. Wiretapping or interception resembles a double-edged sword. According to Raz (in Manthovani, 2017), a sharp knife has both good and bad properties: it can be used to slice vegetables, but it can also be used to harm humans. Wiretapping can detect and reveal cases, but on the other hand, it has a dangerous tendency to violate human rights, especially the right to privacy. Therefore, wiretapping is prone to abuse, especially when the legal rules that underlie it do not align with the principles of respect for human rights. According to Raz, morality is needed to use legal instruments according to their proper purpose.

Several laws and regulations grant the authority to conduct wiretapping for intelligence and law enforcement purposes. For intelligence purposes, the institution granted authority to conduct wiretapping is the State Intelligence Agency (Badan Intelijen Negara/BIN), as regulated in Articles 31 and 32 of Law Number 17 of 2011 concerning State Intelligence. Wiretapping conducted by BIN is carried out for the purpose of performing intelligence functions and is conducted under the order of the Head of the Intelligence Agency for a period of six months.

For law enforcement purposes, Article 430 paragraph (2) of the Indonesian Criminal Code stipulates that :

“The same criminal penalty shall be imposed on an official who exceeds his authority by ordering a telephone official or another person assigned to public telephone work to provide information regarding a conversation conducted through that institution.”

Furthermore, Article 42 paragraph (2) of Law Number 36 of 1999 concerning Telecommunications provides that :

“For the purposes of criminal judicial proceedings, telecommunications service providers may record information sent and/or received and may provide the necessary information upon :

- a) a written request from the Attorney General and/or the Chief of the Indonesian National Police for certain criminal acts;*
- b) a request from investigators for certain criminal acts in accordance with the applicable laws."*

In addition, Article 28 paragraph (1) of Law Number 46 of 2009 concerning the Corruption Court provides that :

"All evidence submitted in court, including evidence obtained from wiretapping, must be obtained legally in accordance with the provisions of laws and regulations."

The Elucidation of Article 28 paragraph (1) states :

"Wiretapping as evidence may only be conducted against a person if there is suspicion based on a report that a corruption crime has occurred and/or will occur."

Based on the explanation above, from the CLS perspective, the distinctive characteristics of CLS—such as skepticism toward legal objectivity, political involvement, the importance of language, and a focus on social justice—can be used to assess whether wiretapping has been conducted neutrally or whether it actually reflects certain political or economic interests. Political involvement can cause wiretapping, which should be a tool to uphold justice, to instead be used to maintain elite power or suppress certain groups. The need for neutral legal language in regulations governing wiretapping is also crucial, so that such rules are not used to conceal certain forms of power and domination. Furthermore, attention to the social and economic impacts of wiretapping or interception cannot be ignored, as wiretapping involves actors, targets, intermediaries, and outputs that can affect the social and economic conditions of the involved parties.

CLS Analysis of the Wiretapping Case Ordered by Antasari Azhar

The tendency for abuse of wiretapping is highly likely due to its confidential nature, and wiretapping constitutes an intrusion into somebody's privacy, even though what is intruded upon and taken by law enforcement officers cannot be physically seen except in the form of recorded conversations. Misuse of wiretapping can occur more easily when the legal basis does not conform to human rights principles, and moral and ethical considerations are required in the use of interception according to its proper purpose. Such actions are prohibited, and human rights must be protected by the state, as emphasized in the Universal Declaration of Human Rights.

In the case examined in this study, wiretapping was carried out by investigators of the Komisi Pemberantasan Korupsi under the order of Antasari Azhar (Chairman of the KPK at that time, 2007–2009) against Nasruddin Zulkarnaen and Rani Juliani because they were suspected of frequently threatening the KPK leadership and his wife. Using his authority, Antasari Azhar ordered the KPK investigation team to wiretap the telephone numbers of Nasruddin Zulkarnaen, Rani Juliani, and their staff member Ina Susanti for approximately three months (6 January–12 March 2009), without a lawful basis.

The Acting Chairman of the KPK at that time, Bibit Samad Rianto, confirmed that the KPK conducted wiretapping of Rani Juliani's telephone. However, the wiretapping was a policy decision of the leadership, motivated by the terror experienced by Antasari Azhar. According to Bibit, the purpose of the wiretapping was to facilitate the work of the KPK, even though the

leadership was under threat. Several telephone numbers were tapped, although they were not disclosed.

The Jakarta Metropolitan Police questioned KPK Deputy Chairman Chandra M. Hamzah regarding the wiretapping order. The police also examined the KPK Director of Information and Data, Budi Ibrahim, and five staff members. It was found that five telephone numbers had been tapped, including those of Nasruddin Zulkarnaen and Rani Juliani. According to the police, Antasari Azhar ordered the wiretapping on the grounds that the individuals frequently threatened his wife, Ida Laksmiwati.

The Director of General Criminal Investigation of the Jakarta Metropolitan Police, Kombes Pol M. Iriawan, stated that he had obtained and listened to the recorded conversations, which had been seized as evidence, but he declined to reveal their content. Although Bibit Samad Rianto stated that the wiretapping aimed to facilitate the work of the KPK and was accompanied by a wiretapping order letter, a KPK advisor at that time, Abdullah Hehamahua, opposed the action because wiretapping, in his view, could only be conducted to uncover corruption cases. He considered the order to violate the code of ethics.

In line with this view, Article 28 paragraph (1) of Law Number 46 of 2009 concerning the Corruption Court — enacted several months after Antasari Azhar's verdict — explicitly requires that wiretapping must be based on suspicion arising from reports of corruption crimes. Although there was a wiretapping order and stated reasons, the action was not based on suspicion of a corruption offense. At that time, Law Number 31 of 1999 on the Eradication of Corruption Crimes and Law Number 20 of 2002 on the Corruption Eradication Commission had not clearly regulated the basis for wiretapping orders.

Article 12 of Law Number 20 of 2002 concerning the Corruption Eradication Commission provides :

“In carrying out the duties of inquiry, investigation, and prosecution as referred to in Article 16 letter e, the Corruption Eradication Commission has the authority to conduct wiretapping and record conversations.”

This article grants authority to conduct wiretapping and record conversations, but it does not regulate detailed procedures, resulting in legal uncertainty.

A central CLS contribution is its critique of legal indeterminacy, the idea that legal rules are often vague, incomplete, or open to competing interpretations. This issue is clearly reflected in Indonesian wiretapping regulations, especially prior to the enactment of more detailed procedural safeguards. Although Article 12 of the former KPK Law formally authorized wiretapping, it failed to specify clear thresholds of suspicion, require prior judicial authorization, establish proportionality and necessity tests.

From a CLS perspective, this indeterminacy is not accidental. Rather, it enables discretionary power, allowing institutional elites to justify surveillance actions post hoc under expansive interpretations of legality. Contemporary legal theorists argue that such ambiguity often benefits dominant actors while marginalizing individual rights. Thus, wiretapping becomes a normalized exception, where extraordinary powers are exercised without corresponding accountability.

Modern CLS that informed human rights scholarship increasingly treats privacy not as an isolated civil liberty, but as a structural safeguard against authoritarian governance. The secrecy

inherent in wiretapping directly undermines transparency, due process, and the presumption of innocence. International human rights standards, particularly Article 17 of the ICCPR, require that any interference with privacy must satisfy legality (clear and accessible law), legitimate aim, necessity and proportionality, independent oversight. The wiretapping case ordered by Antasari Azhar, as discussed in the document, fails to meet these cumulative standards, as it was conducted without a corruption-related suspicion, for institutional self-protection, without judicial supervision. Recent empirical studies confirm that unchecked surveillance practices disproportionately affect democratic accountability and foster a culture of impunity within law enforcement agencies.

CLS places strong emphasis on the political function of legal language. Terms such as “facilitating institutional duties,” “security considerations,” or “operational necessity” often function as discursive shields, concealing rights violations behind technocratic rhetoric. In the Antasari Azhar case, the justification of wiretapping as an institutional necessity illustrates how legal discourse can normalize exceptional measures, depoliticize controversial decisions, silence ethical objections within institutions. Recent critical discourse analyses in legal studies demonstrate that surveillance laws frequently employ abstract and ambiguous terminology to expand executive discretion while limiting public scrutiny.

From the CLS perspective, political involvement is clearly reflected in the wiretapping case ordered by Antasari Azhar. Wiretapping became an instrument to protect institutional leadership under the pretext of facilitating the work of the KPK, even though it was not based on any report of alleged corruption. The lack of clear legal language in earlier laws enabled the issuance of such orders and allowed them to be considered lawful.

D. CONCLUSION

Critical Legal Studies is a legal thought that rejects the liberal legal tradition that separates law and politics and assumes that law is neutral from political processes. In reality, law does not operate in a vacuum, but within a subjective and non-neutral reality. The use of wiretapping or interception technology is commonly practiced by law enforcement and intelligence agencies, both for evidentiary purposes in court proceedings and for intelligence activities.

From a Critical Legal Studies perspective, wiretapping in the Indonesian legal system cannot be understood as a neutral investigative technique. Instead, it represents a contested legal practice shaped by political power, institutional interests, and normative ambiguity. On the other hand, wiretapping can be misused by law enforcement officers to carry out actions outside legitimate law enforcement, as seen in the wiretapping ordered by Antasari Azhar against Nasruddin Zulkarnaen and Rani Juliani. The Antasari Azhar case exemplifies how surveillance authority may be diverted from its original anti-corruption purpose toward institutional self-preservation.

By exposing the political, linguistic, and structural dimensions of wiretapping, CLS contributes to a deeper understanding of why legal reform must go beyond procedural adjustments and address the power relations embedded in law itself. Wiretapping can serve as a tool to detect and reveal cases, but it also poses serious risks to human rights, especially the right to privacy. From a CLS perspective, political involvement is evident in this case, where

wiretapping was used as an instrument to protect institutional leadership. The importance of clear legal language is therefore crucial in this context.

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