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Reformulating the Policy Framework for Sting Operations by Investigators of the Corruption Eradication Commission

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Abstract: *Corruption offenses in Indonesia are perceived as ongoing and persistent, continuing to this day and resulting in significant losses to the state. The establishment of the Corruption Eradication Commission through Law Number 30 of 2002 concerning the Corruption Eradication Commission serves as a trigger mechanism to enhance the effectiveness of anti-corruption efforts. As part of its initiatives, the Corruption Eradication Commission conducts Sting Operations aimed at combating corruption by apprehending perpetrators through silent operations. This study formulates two problems, namely, how the mechanism of Sting Operations held by the Corruption Eradication Commission investigators aligns with legislation, and what is the ideal regulation of Sting Operations held by the Corruption Eradication Commission investigators. This study is a normative legal research with secondary data consisting of primary, secondary, and tertiary legal materials. This study uses a statutory, conceptual, and interpretive approach. The result of this study indicates that Sting Operations conducted by the Corruption Eradication Commission are often equated with the concept of 'caught red-handed', which is stated in The Indonesian Criminal Procedure Code (KUHAP). However, both Sting Operations and 'caught red-handed' differ in meaning and may potentially violate the principle of due process of law. Therefore, a comprehensive reformulation of Sting Operations procedures within the legal framework of the Corruption Eradication Commission is necessary.*

Keyword: Corruption Offenses, Corruption Eradication Commission, Sting Operations

Abstrak: Tindak pidana korupsi di Indonesia sampai saat ini masih terjadi dan menimbulkan kerugian negara yang dapat menghambat pembangunan dan kemajuan negara. Dibentuknya Komisi Pemberantasan Tindak Pidana Korupsi dalam Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi sebagai trigger mechanism untuk meningkatkan efektivitas pemberantasan Korupsi. Sebagai upaya dalam memberantas korupsi KPK melakukan Operasi Tangkap Tangan yaitu metode yang dilakukan untuk menangkap basah para tersangka kasus korupsi dengan cara operasi rahasia. Penelitian ini merumuskan dua permasalahan yaitu bagaimana mekanisme operasi tangkap tangan oleh penyidik komisi pemberantasan korupsi berdasarkan peraturan perundang-undangan? dan bagaimana idealnya pengaturan operasi tangkap tangan oleh penyidik komisi pemberantasan korupsi. Penelitian ini menggunakan metode penelitian hukum normatif, sumber data sekunder bahan hukum primer, sekunder, dan tersier. Penelitian ini menggunakan pendekatan peraturan perundang-undangan. konseptual, dan penafsiran. Hasil penelitian ini menunjukkan bahwa Operasi Tangkap Tanganyang dilakukan Komisi Pemberantasan

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Tindak Pidana Korupsi berkiblat pada tertangkap tangan yang ada dalam Kitab Undang-Undang Hukum Acara Pidana, namun Operasi Tangkap Tangan dengan tertangkap tangan memiliki arti dan makna yang berbeda dan menyalahi prinsip due process of law sehingga perlu diatur kembali Operasi Tangkap Tangan ke dalam tubuh Komisi Pemberantasan Tindak Pidana Korupsi secara komprehensif.

Kata Kunci: *Tindak Pidana Korupsi, Komisi Pemberantasan Korupsi, Operasi Tangkap Tangan*

A. Introduction

The phenomenon of corruption in Indonesia has existed long before its independence. During the colonial era, the tradition of giving tributes by certain segments of society to local authorities served as evidence of corruption at that time. Corruption practices in Indonesia are severely bad, hence making it difficult to eliminate permanently.[1] According to the Contemporary Dictionary of Corruption, corruption is defined as bribery, graft, embezzlement, misconduct (such as accepting bribes), and abuse of power (or authority) for personal gain, which includes committing a criminal act with the intent to enrich oneself, either directly or indirectly. This act has caused both financial and economic losses to the state. Corruption perpetrators are referred to as "corruptors," meaning individuals who commit acts of corruption.[2]

Indonesia Corruption Watch (ICW) presented its report on corruption trends in May 2024 at the ICW office in South Jakarta, revealing 791 corruption cases throughout 2023 involving 1,695 suspects. This marks a significant increase compared to the previous year, which recorded only 579 cases with 1,396 suspects.[3] KPK, the authorized agency handling corruption crimes (Tipikor), also reported 2,730 cases during the period 2020–2024, as explained by Deputy Chairman Alexander Marwata during the press conference on KPK's work achievements for 2019–2024.[4] Of these cases, the KPK named 691 suspects and conducted 36 OTTs throughout the 2020–2024 period. Through 2024, KPK has also conducted OTT related to alleged corruption involving procurement funded by the Regional Revenue and Expenditure Budget (APBD) of Labuhanbatu Regency, extortion within the Sidoarjo City, gratification within the Province of South Kalimantan, and extortion in Bengkulu and Pekanbaru.[5]

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[1]Suyanto, *Pengantar Hukum Pidana* (Yogyakarta: Budi Utama, 2018).

[2]Firdaus Sholihin dan Wiwin Yulianingsih, *Kamus Hukum Kontemporer* (Jakarta: Sinar Grafika, 2016).

[3]Ade Ridwan Yandwiputra, "ICW Catat Sepanjang 2023 Ada 791 Kasus Korupsi, Meningkat Singnifikan 5 Tahun Terakhir," TEMPO, 2024, https://www.tempo.co/hukum/icw-catat-sepanjang-2023-ada-791-kasus-korupsi-meningkat-singnifikan-5-tahun-terakhir-57431. Retrieved on February 12, 2025.

[4]Tim Berita KPK, "Kinerja KPK 2020-2024: Tangani 2.730 Perkara Korupsi, Lima Sektor Jadi Fokus Utama," Berita KPK, 2024, https://www.kpk.go.id/id/ruang-informasi/berita/kinerja-kpk-2020-2024-tangani-2730-perkara-korupsi-lima-sektor-jadi-fokus-utama. Retrieved on February 12, 2025.

[5]Anggi Muliawati, "KPK Gelar 36 Kali OTT Sepanjang 2020-2024, Total 691 Tersangka", Detiknews, 2024, https://news.detik.com/berita/d-7691524/kpk-gelar-36-kali-ott-sepanjang-2020-

As shown by the data, corruption in Indonesia is very frequent and continues to proliferate, occurring both within governmental institutions and private sectors, with the purpose of enriching oneself. Corruption within the government causes financial losses to the state, which inhibits national development, the economy, and the total disturbance towards countless aspects of the state.[6] This situation has reached a very concerning level, as each year, parts of the state budget are lost due to the actions of irresponsible individuals. Consequently, corruption offenses are categorized as an extraordinary crime, no longer as ordinary ones.[7]

As we know, there are a number of frameworks regulating corruption offenses both formally and materially. Among them are Law Number 31 of 1999 concerning the Eradication of Corruption Offenses, which has been amended to Law Number 20 of 2001 concerning the Eradication of Corruption Offenses (Law Number 20 of 2001 concerning PTPK), Law Number 30 of 2002 concerning KPK, and Law Number 19 of 2019 concerning the Second Amendment of Law Number 30 of 2002 concerning KPK (Law 19/2019 concerning KPK). Law Number 46 of 2009 concerning the Corruption Court.[8] In spite of the numerous legal norms, corruption still occurs in Indonesia.

Until this day, corruption remains a difficult issue to control in Indonesia due to its significant impacts which not only affects state financial and economy, but also the violation of social rights and retards the national development.[9] Corruption offenses cannot be tolerated, especially considering that Indonesia is a state based on the rule of law, where law enforcement is a fundamental principle that must be applied to individuals or state officials who commit unlawful acts, including corruption. Since corruption is an extraordinary crime, the usual methods of eradicating it have not proven effective in resolving the issue. Therefore, extraordinary measures are needed to confront and overcome it.[10]

The United Nations Convention Against Corruption (UNCAC) mandates in the international anti-corruption convention that countries can effectively and efficiently carry out the eradication and prevention of corruption through anti-corruption institutions. Indonesia has ratified this convention through Law Number 7 of 2006 concerning the Ratification of UNCAC.[11] However, Indonesia had already established

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2024-total-691-tersangka#:~:text=KPK mencatat telah melakukan operasi tangkap tangan %28OTT%29,36 kali. Jumlah tersebut dilakukan selama periode 2020-2024. Retrieved on March 1, 2025.

[6]Risqi Perdana Putra, *Penegakan Hukum Tindak Pidana Korupsi* (Yogyakarta: Budi Utama, 2020).

[7]Frisca Tyara M Fanhar, “Operasi Tangkap Tangan (OTT) Tinjauan Berdasarkan KUHAP Dan Undang Undang Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Korupsi (KPK),” *Corruptio* 1, no. 2 (2020): 91–104.

[8]Arfiani Arfiani, Syofirman Syofyan, dan Sucy Delyarahmi, “Problematika Penegakan Hukum Delik Obstruction of Justice Dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi,” *UNES Journal of Swara Justisia* 6, no. 4 (2023): 516.

[9]Basrief Arief, *Korupsi dan Upaya Penegakan Hukum (Kapita Selekta)* (Jakarta: Adika Remaja Indonesia, 2006).

[10]*S*rimin Pinem, Muhammad Yusrizal, dan Adi Syaputra, "Dinamika Pemberantasan Tindak Pidana Korupsi," *Jurnal Yuridis* 10, no. 2 (2023).

[11]Muhammad Habibi, “Independensi Kewenangan Komisi Pemberantasan Korupsi Komisi Pemberantasan Korupsi,” *Cepalo* 4, no. 1 (2020): 41–51.

an independent anti-corruption body prior to the existence of UNCAC. This body is regulated under UU KPK as a trigger mechanism, acknowledging that both the police and the prosecution service had not been optimal or effective in combating corruption.[12]

KPK was established to enhance the effectiveness of anti-corruption efforts and operates independently, without being influenced by any external authority. UU KPK was later amended by Law Number 19 of 2019 concerning the KPK, a revision that has been seen to raise various legal issues.[13] Nevertheless, in carrying out its duties and authority, the KPK continues to take measures to prevent and combat corruption. One such measure is through OTT, which is conducted as a silent operation to catch suspects in the act of committing corruption.[14]

OTT or "operation of catching in the act" is conducted when there is an allegation of a corruption offense, either in the form of giving or receiving bribes. OTT is a corruption eradication mechanism based on KUHAP and Law Number 31 of 1999, in conjunction with Law Number 20 of 2001. This action was conducted using two primary techniques, which are wiretapping and entrapment.[15] Wiretapping is not considered a violation of privacy rights as affirmed by the Constitutional Court.[16] stated that privacy rights are not part of non-derogable rights. Therefore, the state may impose limitations on the exercise of such rights based on Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia. [17]

The criminal justice system regulates investigations into corruption. KPK is granted authority under Article 11 paragraph (1) of Law Number 19 of 2019 concerning the KPK, which authorizes the KPK to conduct inquiries, investigations, and prosecutions involving law enforcement officers, state officials, and other parties related to a state financial loss of at least 1 billion rupiahs.[18] However, the practice of OTT appears to conflict with the provisions of KUHAP, which refers to the concept of being "caught red-handed," rather than explicitly recognizing sting operations. Moreover, OTT is not explicitly mentioned in either KUHAP or UU KPK.[19]

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[12]Zainal Arifin Mochtar Mochtar, "Independensi Komisi Pemberantasan Korupsi Pasca Undang-Undang Nomor 19 Tahun 2019," *Jurnal Konstitusi* 18, no. 2 (2021): 345.

[13]Sardjana Orba Manullang et al., "Problematika Hukum atas Pembentukan Perubahan Kedua atas UU KPK," *Journal on Education* 05, no. 02 (2023): 4885–97.

[14]Rizky Oktavianto dan Norin Mustika Rahadiri Abheseka, "Evaluasi Operasi Tangkap Tangan KPK," *Jurnal Antikorupsi INTEGRITAS* 5, no. 2 (2019): 117–31.

[15]Muhammad Alfin Saputra, "Implementasi Operasi Tangkap Tangan Yang Dilakukan Komisi Pemberantasan Korupsi," *Jurnal Lex Renaissance* 5, no. 4 (2020): 806–18.

[16]Willa Wahyuni, "Mengenal Operasi Tangkap Tangan KPK," HUKUMONLINE.COM, 2022, https://www.hukumonline.com/berita/a/mengenal-operasi-tangkap-tangan-kpk-lt626ac7a171949?page=all. Retrieved on January 1, 2025.

[17]Muhammad Alfin Saputra, "Implementasi Operasi Tangkap Tangan Yang Dilakukan Komisi Pemberantasan Korupsi", *Lex Renaissance* 5, no. 4 (2020).

[18]"Undang-Undang Republik Indonesia Nomor 19 Tahun 2019 tentang Perubahan Kedua Atas Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi" (n.d.).

[19]Mardian Putra Frans dan Muh Haryanto, "Legalitas Operasi Tangkap Tangan Oleh Komisi Pemberantasan Tindak Pidana Korupsi," *Jurnal Ilmu Hukum* 3, no. 2 (2020): 117–18.

Regarding wiretapping, UU KPK does not explicitly and clearly outline the mechanisms and limitations of the KPK's authority to conduct wiretapping. This is evident in the explanatory section of Article 12, paragraph (1), letter a of Law Number 19 of 2019 concerning the KPK, where it merely states "Sufficiently clear", meaning that the lawmakers consider the formulation in the article's main body to be self-explanatory and in no need of further clarification. In fact, however, the mechanisms and limitations referred to in that article remain uncertain.[20] As stated by former KPK Commissioner Johanis Tanak, OTT contradicts the KUHAP because the term "OTT" is not explicitly found in KUHAP. Instead, it appears in Presidential Regulation Number 87 of 2016 concerning the Illegal Levies Eradication Task Force (Perpres No. 87/2016 on Saber Pungli Task Force). Additionally, the practice of entrapment also lacks a strong legal foundation, which has sparked debate among legal experts.[21]

The government has made every possible effort to combat corruption through the existing legal instruments. However, these efforts have yet to provide convincing answers or evidence to the public, which still believes that the state must take extraordinary measures to cure the worsening disease of corruption. The eradication of corruption, as part of law enforcement efforts in Indonesia, is still considered suboptimal and plagued with numerous shortcomings and weaknesses, making it necessary to reform and improve the current legal system. This is part of the effort to combat and enforce the law against corruption offenses.[22]

The absence of explicit regulation of OTT in the existing legal norms is one of the factors hindering the optimal enforcement of corruption laws. From the early stages, the eradication process already faces a range of legal issues, particularly in terms of substance, which ultimately affects the structure and execution of the substance itself. Based on the background described above, the author formulates two main problems: What is the mechanism of OTT in handling corruption cases, according to the prevailing laws and regulations, and what is the ideal regulation of OTT by KPK investigators?

This study uses a normative legal research method, which focuses on the study of legal norms or rules using several approaches, namely the statutory approach, conceptual approach, and interpretive approach. These methods are used to obtain answers to the legal issues discussed in this paper. The data sources used in this research are secondary data, which consist of three types of legal materials: primary, secondary, and tertiary legal materials. Data collection techniques include literature study and interviews as a complement to the secondary data. The data is then analyzed using a descriptive analysis technique applied to legal events in this study, such as OTT

[20]Frans dan Haryanto.

[21]Wahyu Nugroho, "OTT Tak Relevan Lagi dalam Memberantas Korupsi?," detiknews, 2024, https://news.detik.com/kolom/d-7672209/ott-tak-relevan-lagi-dalam-memberantas-korupsi. Retrieved on January 1, 2025.

[22]Dwi Atmoko dan Amalia Syauket, "Penegakan Hukum Terhadap Tindak Pidana Korupsi Ditinjau dari Perspektif Dampak Serta Upaya Pemberantasan," *Binamulia Hukum* 11, no. 2 (2022): 177–91.

conducted by investigators of KPK, and the legal condition of a law that conflicts with or is inconsistent with other regulations, or where no specific law yet regulates the legal event in question.

B. The Mechanism of Sting Operations Conducted by Investigators of the Corruption Eradication Commission in Addressing Corruption Offenses in Accordance with Statutory Law

KPK, as a *State Auxiliary Body*, was established to optimize the eradication of corruption, which continues to persist to this day. It is granted full authority to combat corruption offenses with the aim of strengthening anti-corruption efforts as an essential component of law enforcement in the Republic of Indonesia.[23] Among the various anti-corruption measures taken by the KPK is the Sting Operation, commonly known as 'Operasi Tangkap Tangan' (OTT). OTT refers to operations that catch suspects in the act of committing corruption. The term first emerged during a KPK press conference announcing the results of an OTT in a bribery case that took place in Surabaya.[24]

The OTT conducted by the KPK is carried out covertly and in a well-measured manner, and it is rare for the targeted individuals to evade the charges, as the operation is typically based on a thorough and lengthy investigative process following early indications of corruption. The term OTT had not found in any regulations, however, OTT often referred to the phrase of 'caught red-handed' in KUHAP, specifically on Article 1 number 19 which stated that, "*Caught red-handed refers to the apprehension of a person at the time of committing a criminal act, or immediately after the criminal act has been committed, or shortly thereafter when the person is identified by the public as someone suspected of having committed the act, or found in possession of an object strongly suspected to have been used in the commission of the crime, indicating that they are the perpetrator, an accomplice, or someone who aided in the act*".[25] Referring to the provisions in the article, OTT can be categorized under the phrase 'immediately after the criminal act has been committed,' which aligns with the practice of OTT conducted by the KPK, as such operations are carried out after the detection of a corruption offense.[26]

Based on an interview with Mr. Hafez, an officer of the KPK Legal Bureau, the term "OTT" (Operation Catch Red-Handed) is considered a media term. In practice, the operation follows the elements outlined in Article 1, point 19 of the Indonesian

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[23]Yogi Pratama Yogi, "Penegakan Hukum Terhadap Operasi Tangkap Tangan Perkara Tindak Pidana Korupsi," *Jurnal Justisia : Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial* 7, no. 1 (2022): 232.

[24]Rocky Marbun, "Konferensi Pers Dan Operasi Tangkap Tangan Sebagai Dominasi Simbolik: Membongkar Kesesatan Berpikir Dalam Penegakan Hukum Pidana," *Jurnal Ius Constituendum* 7, no. 1 (2022): 1.

[25]"Undang-Undang Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana" (n.d.).

[26]Wahyuni Krisnawati dan Hari Soeskandi, "Peristilahan Operasi Tangkap Tangan Ditinjau Dari Prespektif Kitab Undang-Undang Hukum Acara Pidana," *Journal Evidence of Law* 1, no. 2 (2022): 112–29.

Criminal Procedure Code (KUHAP), which defines the act of being caught in the act. The mechanism of an OTT begins with information or reports from the public, received through the Directorate of Public Reports and Complaints Services (PLPM), which is responsible for receiving, processing, and following up on public complaints related to corruption offenses. After receiving a report, the process continues with internal planning, including examination and analysis. This is followed by the inquiry stage to determine whether a criminal offense has occurred. During this stage, the KPK commonly uses wiretapping as one of the field methods before executing an OTT.[27]

According to Article 1 Number 5 Law No. 19 of 2019 concerning the KPK, wiretapping is defined as the activity of listening to, recording, and/or noting the transmission of electronic information and/or private electronic documents, whether through wired communication networks, wireless networks such as electromagnetic transmissions or radio frequencies, or other electronic devices. The KPK's authority to conduct wiretapping is regulated under Article 12, Paragraph (1) of Law No. 19 of 2019.[28] Wiretapping in corruption cases is typically carried out during the inquiry stage, which is the initial phase of a criminal process, prior to the investigation stage. At this point, wiretapping is conducted to determine whether a criminal offense has occurred. Therefore, investigators and prosecutors from the KPK believe that the wiretapping conducted is in accordance with the applicable laws and is an effective method for collecting strong evidence to identify OTT targets before carrying out the operation.[29]

Based on the information got from Mr. Hafez and Ms. Endang, the KPK, in conducting inquiries, is not only tasked with identifying criminal events but also has the authority to seek preliminary evidence, as mentioned in Article 44 paragraph (1) of UU KPK, which states, "*If, during the inquiry, an investigator discovers sufficient preliminary evidence indicating an alleged act of corruption, the investigator must report it to the Corruption Eradication Commission (KPK) no later than 7 (seven) working days from the date the preliminary evidence is found*".[30] Therefore, if preliminary evidence is discovered during the inquiry process, the investigator may carry out a catch-in-the-act operation (OTT) by bringing the suspected individuals found at the crime scene (TKP) without an arrest or detention warrant. This is because the individuals are taken in solely for examination purposes for a maximum of 24 hours to determine their status as either suspects or witnesses.[31] This is based on Article 18, paragraph (2) of KUHAP, which defines that in the event of being caught red-handed, arrest may be carried out

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[27]Interview with Hafez, Legal staff of the Corruption Eradication Commission, Jakarta, 2025.

[28]Yodi Alfahri Daun, Tofik Yanuar Chandra, dan Agung Makbul, "Kewenangan KPK Melakukan Penyadapan Dalam Penyelidikan dan Penyidikan Tindak Pidana Korupsi," *SALAM: Jurnal Sosial dan Budaya Syari* 9, no. 5 (2022): 1526–40.

[29]Dionesius Kevin Wibisono, Pujiyono, dan A.M. Endah Sri Astuti, "Operasi Tangkap Tangan Sebagai Strategi Pemberantasan Tindak Pidana Korupsi Oleh Komisi Pemberantasan Korupsi," *Diponegoro Law Journal* 10, no. 4 (2021).

[30]"Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi" (n.d.).

[31]Interview with Endang dan Hafez, Legal staff of the Corruption Eradication Commission, Jakarta, 2025.

without a warrant, provided that the arrested individual and any evidence are promptly handed over to the nearest investigator or assistant investigator.[32] Following the naming of suspects, the KPK holds a press conference to announce the suspects publicly, in order to avoid negative public perceptions of those brought in for questioning. However, regarding entrapment in OTT operations, it is not practiced; entrapment is only found in narcotics cases.[33]

Entrapment in OTT is not governed by any specific legal regulation. This trapping technique is only found in the handling of narcotics and psychotropic substance abuse cases, where the police are authorized to carry out undercover deliveries and purchases, a method referred to as entrapment. This is considered legal because it is explicitly regulated under Article 55 of Law Number 5 of 1997 concerning Psychotropics *juncto* with Article 75 of Law Number 35 of 2009 concerning Narcotics. The entrapment referred to in these laws involves direct intervention in criminal acts, such as undercover purchases and deliveries during narcotics and psychotropic offenses. However, this method cannot be applied to corruption crimes such as bribery or gratification. In such cases, the Corruption Eradication Commission (KPK), acting as the investigator, cannot perform entrapment because the reporting of gratification is already regulated under the Corruption Eradication Law.[34]

There are several reasons why the KPK carries out sting operations. The OTT is considered effective in proving crimes that are difficult to uncover, such as corruption, because direct evidence can be obtained. Its evidentiary value aligns with the legal postulate *In Criminalibus Probationes Debent Esse Luce Clariores*, which means that in criminal cases, the evidence must be clearer than light itself. Through OTT, the evidence obtained is clear, explicit, and accurate, not merely based on suspicion. An OTT operation is usually preceded by a series of wiretapping activities conducted over a certain period and process. Essentially, the results of wiretapping serve as preliminary evidence of a criminal act when the evidence aligns and corroborates with other findings (corroborating evidence). OTT is deemed to have a strong evidentiary value capable of fulfilling the standard of *Probatio Plena* (full proof), meaning the obtained evidence leaves no doubt about the perpetrator's involvement in the crime.[35] When conducting OTT or red-handed arrests, the KPK must coordinate with relevant institutions or parties such as the police, the prosecution, the Audit Board of Indonesia (BPK), and others. This is necessary because the KPK is based solely in the capital city. However, OTT operations often face obstacles and challenges in combating corruption. One challenge is the public's tendency to protect their regional leaders. Additionally,

[32]Undang-Undang Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana.

[33]Interview with Endang dan Hafez, Legal staff of the Corruption Eradication Commission, Jakarta, 2025.

[34]Afif Naufal Faris dan Rehnalemken Ginting, "Legalitas Dan Efektivitas Operasi Tangkap Tangan Pasca Berlakunya Undang-Undang Nomor 19 Tahun 2019," *Recidive : Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 9, no. 1 (2020): 67.

[35]Andre Pratama dan Gunawan Nachrawi, "Tinjauan Hukum Terhadap Operasi Tangkap Tangan Terkait Kasus Jual Beli Jabatan Di Lingkungan Pemerintah Daerah," *Jurnal Ilmiah Publika* 10, no. 2 (2022): 407–15.

the KPK's limited presence in only the capital obstructs the timely handling of corruption cases in other regions.[36]

C. Ideal Regulation of Sting Operations by Corruption Eradication Commission Investigators

The explanation of sting operations (OTT) is not found in KUHAP, even though law enforcement officers, in this case, KPK investigators, are required to comply with formal criminal law when applying substantive criminal law. KUHAP only recognizes the terms 'arrest' and 'caught red-handed',[37] both of which have different meanings from OTT. The term OTT only appears in Presidential Regulation Number 87 of 2016 concerning the Illegal Levies Eradication Task Force (Satgas Saber Pungli), specifically in Article 4 letter (d), which outlines the task force's authorities, yet even there, no clear definition is provided. As a result, the OTT operations carried out by the KPK have led some to argue that the practice is illegal due to the absence of explicit legal regulation.[38]

The definition of "arrest" is regulated in Article 1 Point 20 KUHAP, defined as an act by an investigator to temporarily restrict the freedom of a suspect or defendant when there is sufficient evidence, for the purpose of investigation, prosecution, and/or trial, in accordance with the procedures set out in this law. While the term of, being caught red-handed is regulated under Article 1 point 19 of KUHAP, defined as the apprehension of someone while committing a criminal act, or immediately after the act has been committed, or shortly thereafter when the person is pointed out by the public as the perpetrator, or when shortly thereafter the person is found with items strongly suspected to have been used in committing the crime, indicating that they are the perpetrator, participated in, or assisted in committing the criminal act.[39] Both terms explain the difference in elements with the definition of OTT.

From a legal perspective, the KPK's Sting Operations (OTT) lack a strong legal foundation, as the term is not found *letterlijk* in several laws. Therefore, OTT is considered to violate the principle of due process of law, which requires that criminal procedure law (*ius puniendi*) contain provisions on procedures, mechanisms, and limits of authority, meaning that anything not regulated cannot be considered a legally valid procedure. Based on this provision, the KPK must carry out its duties and functions within the scope of authority granted by law. Any actions outside the scope of procedural law, such as OTT, cannot be justified or executed.[40] Furthermore, the definition of being caught in caught red-handed under KUHAP is significantly different from OTT, and the UU KPK does not explicitly regulate OTT.

[36]Interview with Hafez and Endang, Legal staff of the Corruption Eradication Commission, Jakarta, 2025.

[37]Frans dan Haryanto, "Legalitas Operasi Tangkap Tangan Oleh Komisi Pemberantasan Tindak Pidana Korupsi."

[38]Faris dan Ginting, "Legalitas Dan Efektivitas Operasi Tangkap Tangan Pasca Berlakunya Undang-Undang Nomor 19 Tahun 2019."

[39]Undang-Undang Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana.

[40]Supardi, *Hukum Acara Pidana* (Jakarta: Kencana, 2023).

Article 12, Paragraphs (1) and (2) of Law No. 19 of 2019 concerning KPK regulates KPK's authority in both investigation and inquiry, which states that "*in carrying out investigative and inquiry duties as referred to in Article 6 letter e, the KPK is authorized to conduct wiretapping. In carrying out investigative duties, the KPK is also authorized to: instruct relevant agencies to prevent someone from traveling abroad; request information from banks or other financial institutions regarding the financial status of suspects or defendants under investigation; order banks or other financial institutions to freeze accounts suspected of containing corruption proceeds belonging to suspects, defendants, or related parties; remove suspects from their official positions; request wealth and tax data of suspects or defendants from relevant agencies; temporarily suspend financial transactions, commercial transactions, and other agreements or revoke permits, licenses, and concessions held by suspects or defendants which, based on sufficient preliminary evidence, are related to the corruption offense under investigation; request assistance from Interpol Indonesia or law enforcement agencies of other countries to search for, arrest, and seize evidence abroad; and request assistance from the police or other relevant agencies to carry out arrests, detentions, searches, and seizures in corruption eradication cases being handled*".[41] The explanation of this article does not include any authority granted to the KPK to carry out OTT; rather, it is limited to wiretapping.[42]

If interpreted grammatically, the terms OTT (*Operasi Tangkap Tangan* or Sting Operation) and caught red-handed (*tertangkap tangan*) are different. A grammatical interpretation is an interpretative method used to understand the meaning of legal provisions through the language, word structure, or sound.[43] This means that the role of language is essential in providing meaning to a particular object.[44] According to the Great Dictionary of the Indonesian Language (*Kamus Besar Bahasa Indonesia* – KBBI), "*tertangkap tangan*" means being caught while committing a crime or a prohibited act, caught in the act. On the other hand, "*operasi tangkap tangan*" is defined as the execution of a previously developed plan.[45] This implies that being caught red-handed refers to a spontaneous event, not one planned by law enforcement, such as investigators. Clearly, OTT is not a legal term nor an implementation of an existing legal norm. Moreover, law enforcement officers are not required to name every action or strategy in law enforcement operations.

In the elements of Article 1 number 19 KUHAP, there are 4 types of caught red-handed, among them are: (1) someone got caught while committing a criminal act, (2)

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[41]Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

[42]Fanhar, "Operasi Tangkap Tangan (OTT) Tinjauan Berdasarkan KUHAP Dan Undang Undang Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Korupsi (KPK)."

[43]Moh Askin dan Masidin, *Penelitian Hukum Normatif Analisis Putusan Hakim* (Jakarta: Kencana, 2023).

[44]Tim Hukumonline, "6 Metode Penafsiran Hukum Sudikno Mertokusumo dan A. Pitlo," Hukum Online, 2022, https://www.hukumonline.com/berita/a/metode-penafsiran-hukum-mertokusumo-pitlo-lt6331ab71b721c?page=all.

[45]Kamus Besar Bahasa Indonesia

immediately after the act has been committed, (3) shortly thereafter when the person is pointed out by the public as the perpetrator, and (4) when shortly thereafter the person is found with items strongly suspected to have been used in committing the crime, indicating that they are the perpetrator, participated in, or assisted in committing the criminal act. In terms of caught red-handed, the arrest was performed immediately, because it is not an incident that had been previously known to law enforcement officers and thus was not preceded by a planning process before the arrest or detention. This is certainly different from the implementation of OTT, which is preceded by a series of planned steps. It typically starts with a report from an individual or the public regarding alleged corruption, followed by analysis and surveillance through wiretapping. Once sufficient results are obtained from the wiretapping, the OTT is carried out. This clearly distinguishes OTT conducted by the KPK from the concept of being caught red-handed as defined in the KUHAP, where the latter occurs spontaneously without prior planning or surveillance through wiretapping.[46]

The OTT is an act within criminal procedural law that inherently requires procedural certainty, both for the accused and in the interest of society. Procedural certainty is a key characteristic of criminal procedural law, ensuring that every stage of the legal process is carried out in accordance with applicable laws. This certainty helps create an orderly legal system, so that in every step of the legal process, all parties involved are expected to be cautious and aware of their rights and obligations.[47] This principle is also in line with Article 5 letter a, which states that the KPK, in carrying out its duties and authorities, must be based on legal certainty.[48] Therefore, it is necessary to reformulate the concept of OTT within the KPK. In other words, to revise or reconstruct the regulation into a more appropriate and ideal form.[49]

The regulation on OTT (hand-catching operations) can be incorporated into the KPK Law (Law No. 19 of 2019) under KPK's authority to conduct investigation and inquiry, as referred to in Article 12 paragraph (2) letter i. This is supported by Article 4 point d of Presidential Regulation No. 87 of 2016 concerning the Saber Pungli Task Force, which states: "*In carrying out its duties and functions, the Saber Pungli Task Force has the authority to conduct hand-catching operations*". This provision can serve as a reference for reformulating OTT into the KPK Law by providing a specific explanation regarding its definition, technical aspects, methods, and structured implementation mechanisms. The formulation of OTT must use legal language that is firm, clear, and easily understood to ensure its implementation aligns with the principle of criminal

[46]Krisnawati dan Soeskandi, "Peristilahan Operasi Tangkap Tangan Ditinjau Dari Prespektif Kitab Undang-Undang Hukum Acara Pidana."

[47]Doni Noviantama, Muhammad Hanif Mahsabihul Ardhi, dan Wahyu Priyanka Nata Permana, "Analisa Hukum Penetapan Tersangka Yang Didasarkan Alat Bukti Hasil Penyelidikan oleh KPK," *Lex Renaissance* 9, no. 2 (2024): 256–81.

[48]Law of the Republic of Indonesia Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

[49]Kamus Besar Bahasa Indonesia

procedural law, namely the due process of law. OTT should be explicitly included in the KPK Law because it is a special legal action that may only be carried out for certain types of crimes, and therefore cannot be applied to general criminal offenses. If OTT is regulated in detail, there will be no inconsistencies or misunderstandings between legal procedures and law enforcement practices. This is in line with the *lex stricta* principle, which requires that provisions in criminal procedural law be interpreted strictly. Meaning they must be defined clearly and rigidly, without ambiguity, to avoid vague formulations of criminal conduct. [50]

Ideally, the implementation of OTT requires a well-organized case administration system, beginning with the collection of data and information based on accurate and reliable sources. This is followed by an investigation phase conducted in accordance with established SOPs, including surveillance, undercover operations, wiretapping, and ultimately, OTT, all of which must comply with the applicable laws (due process of law). OTT is used in corruption cases because such crimes are notoriously difficult to prove, as they are typically carried out in a structured and discreet manner by perpetrators with high intellectual capacity who often use various methods to manipulate law enforcement and conceal their crimes. Therefore, the KPK applies OTT as a more repressive measure, which must be exercised in accordance with constitutional authority, especially given that OTT currently lacks a clear legal standing. This is necessary to prevent potential abuse of power by law enforcement authorities, in this case, the KPK.[51]

Explicitly formulating OTT within the scope of KPK's authority has the potential to enhance both the integrity and effectiveness of the institution in carrying out its duties and functions as the main body responsible for eradicating corruption. This formulation can also optimize the process of law enforcement in accordance with the principles of criminal procedural law, which serve as the operational guidelines for KPK. In addition, the existence of clear regulations regarding OTT can create a deterrent effect, particularly for state officials and other parties with malicious intent to commit corruption. Given the strict, discreet, and structured nature of OTT, such operations can accurately uncover acts that harm state finances or the economy for personal or group gain.

D. Conclusion

KPK, in carrying out sting operations (OTT), refers to Article 1, Point 19 of the KUHAP, namely the act of being caught red-handed, using wiretapping methods regulated in the UU KPK and Law Number 19 of 2019 concerning the KPK. Wiretapping is conducted during the investigation phase to obtain preliminary evidence, as stated in Article 44, Paragraph (1) of UU KPK. The stages begin with public reports submitted through PLPM, which are then analyzed, followed by monitoring and wiretapping

[50]Supardi, *Hukum Acara Pidana*.

[51]Fanhar, "Operasi Tangkap Tangan (OTT) Tinjauan Berdasarkan KUHAP Dan Undang Undang Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Korupsi (KPK)."

processes based on Article 12 of Law Number 19 of 2019 concerning KPK. This investigation stage aims to clearly determine whether an act of corruption has occurred. However, since OTT lacks a strong legal basis, or is not literally found in any statutory law, and the interpretation of OTT as equivalent to "*tertangkap tangan*" (caught red-handed) in KUHAP is actually a misinterpretation, reformulation is necessary. In practice, OTT is preceded by planned actions such as wiretapping, whereas being caught red-handed under KUHAP refers to spontaneous acts without prior wiretapping or planning. Therefore, OTT must be formally incorporated into the KPK's legal framework, particularly as part of its official authority, to ensure that such actions comply with the principles of criminal procedural law, namely due process of law.

The author suggests that, in order to optimize efforts in eradicating corruption, the KPK must ensure that the implementation of OTT is based on a clear legal foundation and not merely a term constructed by the KPK itself without firm normative grounding in statutory regulations. Furthermore, the execution of KPK's duties and functions must remain within the boundaries of authority established by law, without creating new legal terms or practices that lack juridical legitimacy. This step is crucial to avoid multiple interpretations in legal application and to uphold the principle of legal certainty. In addition, it is recommended that the KPK not keep its Standard Operating Procedures (SOPs) confidential, as transparency regarding SOPs will not hinder the institution's effectiveness but rather strengthen public trust in the KPK's transparency and accountability.

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