

BAB III

PENUTUP

A. Kesimpulan

Berdasarkan pembahasan yang telah dilakukan, dapat disimpulkan bahwa kejahatan spionase yang dilakukan oleh pejabat diplomatik merupakan pelanggaran terhadap ketentuan-ketentuan dalam hukum diplomatik, khususnya Konvensi Wina 1961 tentang Hubungan Diplomatik. Ketika seorang pejabat diplomatik melakukan kejahatan spionase, hukuman yang dapat diberikan oleh negara penerima adalah menyatakan deklarasi *persona non grata* kepada pejabat diplomatik yang bersangkutan. Hal ini mengingat bahwa seorang pejabat diplomatik memiliki hak kekebalan dan keistimewaan diplomatik sehingga pejabat diplomatik tersebut kebal terhadap yurisdiksi negara penerima. Dalam hal tertentu, hak kekebalan dan keistimewaan diplomatik dapat ditanggalkan dengan cara negara penerima meminta kepada negara pengirim untuk menanggalkan hak kekebalan dan keistimewaan pejabat diplomatik tersebut.

Apabila dikaitkan dengan kasus penyadapan yang dilakukan oleh pejabat diplomatik Australia terhadap beberapa pejabat pemerintah Indonesia, Pemerintah Indonesia mengajukan protes keras kepada pemerintah Australia dengan mengirimkan nota protes kepada Duta Besar Australia. Tindakan tersebut kemudian dilanjutkan dengan pemanggilan kembali Duta Besar Indonesia di Canberra (*recall*). Selain mengajukan protes keras dan melakukan

recall, pemerintah Indonesia juga melakukan tindakan peninjauan kembali terhadap semua perjanjian dan kerjasama bilateral antara Indonesia-Australia, di mana tindakan tersebut dapat dikualifikasikan sebagai tindakan *countermeasure*.

B. Saran

Berdasarkan kesimpulan tersebut, rekomendasi yang dapat diberikan antara lain:

1. Pemerintah Indonesia sebaiknya bersikap tegas dengan cara langsung menyatakan *persona non grata* kepada Duta Besar Australia agar insiden penyadapan tidak terulang kembali.
2. Pemerintah Indonesia juga perlu melakukan protes keras terhadap pejabat diplomatik Amerika Serikat. Hal ini mengingat bahwa penyadapan yang dilakukan oleh pemerintah Australia dimotori oleh pemerintah Amerika Serikat.

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Lampiran I:

**AGREEMENT
BETWEEN THE REPUBLIC OF INDONESIA AND AUSTRALIA
ON THE FRAMEWORK FOR SECURITY COOPERATION**

The Government of the Republic of Indonesia and the Government of Australia (here in after referred to as the 'Parties')

Reaffirming the sovereign equality of the Parties their faith in the purposes and principles of the Charter of the United Nations and their desire to live in peace with all peoples and all governments;

Reaffirming the commitment to the sovereignty, unity, independence, and territorial integrity of both Parties, and the importance of the principles of good neighbourliness and non-interference in the internal affairs of one another, consistent with the Charter of the United Nations;

Recognising that both Parties are democratic, dynamic, and outward-looking members of the region and the international community;

Recognising also the new global challenges, notably from international terrorism, traditional and non-traditional security threats;

Recognising further the importance of continued and enhanced cooperation in meeting the challenges posed by international terrorism and transnational crime;

Determined to work together to respond to these new challenges and threats;

Determined also to maintain and strengthen bilateral cooperation and regular dialogue including established regular discussions on strategic, defence, intelligence, law enforcement, and other matters;

Determined further to maintain and strengthen the long-standing political, economic, social, and security cooperation which exist between the two Parties and their common regional interests and ties, including the stability, progress and prosperity of the Asia-Pacific region;

Recognising the value of bilateral agreements and arrangements between the two countries since 1960 including the major bilateral instruments on security that have provided a strong legal framework for both countries in dealing with various security threats and issues as well as the importance of existing dialogue and cooperation through the Indonesia Australia Ministerial Forum (IAMF);

Emphasizing also the importance of working together through regional and international fora on security matters to contribute to the maintenance of international peace and security;

Determined to comply in good faith with their obligations under generally recognized principles and rules of international law;

Adhering to their respective laws and regulations;

Have agreed as follows:

ARTICLE 1 PURPOSES

The main objectives of this agreement are:

1. to provide a framework for deepening and expanding bilateral cooperation and exchanges as well as to intensify cooperation and consultation between the Parties in areas of mutual interest and concern on matters affecting their common security as well as their respective national security.
2. to establish a bilateral consultative mechanism with a view to encouraging intensive dialogue, exchanges and implementation of cooperative activities as well as strengthening institutional relationships pursuant to this Agreement.

ARTICLE 2 PRINCIPLES

In their relations with one another, the Parties shall be guided by following fundamental principles, consistent with the Charter of the United Nations.

1. Equality, mutual benefit and recognition of enduring interests each Party has in the stability, security, and prosperity, of the other;
2. Mutual respect and support for the sovereignty, territorial integrity, national unity and political independence of each other, and also non-interference in the internal affairs of one another;
3. The Parties, consistent with their respective domestic laws and international obligations, shall not in any manner support or participate in activities by any person or entity which constitutes a threat to the stability, sovereignty or territorial integrity of the other Party, including by those who seek to use its territory for encouraging or committing such activities, including separatism, in the territory of the other Party;

4. The Parties undertake, consistent with the Charter of the United Nations, to settle any disputes that might arise between them by peaceful means in such a manner that international peace, security and justice are not endangered;
5. The Parties shall refrain from the threat or use of force against the territorial integrity or political independence of the other, in accordance with the UN Charter;
6. Nothing in this Agreement shall affect in any way the existing rights and obligations of either Party under international law.

ARTICLE 3 AREAS AND FORMS OF COOPERATION

The scope of cooperation of this Agreement shall include:

Defence Cooperation

In recognition of the long-term mutual benefit of the closest professional cooperation between their Defence Forces,

1. Regular consultation on defence and security issues concern; and on their respective defence policies;
2. Promotion of development and capacity building of defence institutions and armed forces of both Parties including through military education and training, exercises, study visits and exchanges, application of scientific methods to support capacity building and management and other related mutually beneficial activities;
3. Facilitating cooperation in the field of mutually beneficial defence technologies and capabilities, including joint design, development, production, marketing and transfer of technology as well as developing mutually agreed joint projects.

Law Enforcement Cooperation

In recognition of the importance of effective cooperation to combat transnational crime that impacts upon the security of both Parties,

4. Regular consultation and dialogue aimed at strengthening the links between institutions and officials at all levels;

5. Cooperation to build capacity of law enforcement officials to prevent, respond to and investigate transnational crime;
6. Strengthening and intensifying police to police cooperation including through joint and coordinated operations;
7. Cooperation between relevant institutions and agencies, including prosecuting authorities, in preventing and combating transnational crimes, in particular crimes related to:
 - a. People smuggling and trafficking in persons;
 - b. Money laundering;
 - c. Financing of terrorism;
 - d. Corruption;
 - e. Illegal fishing;
 - f. Cyber-crimes;
 - g. Illicit trafficking in narcotics drugs and psychotropic substances and its precursors;
 - h. Illicit trafficking in arms, ammunition, explosives and other dangerous materials and the illegal production thereof; and
 - i. Other types of crime if deemed necessary by both Parties.

Counter-terrorism Cooperation

In recognition of the importance of close and continuing cooperation to combat and eliminate international terrorism through communication, cooperation and action at all levels,

8. Doing everything possible individually and jointly to eradicate international terrorism and extremism and its roots and causes and to bring those who support or engage in violent criminal acts to justice in accordance with international law and their respective national laws;
9. Further strengthening cooperation to combat international terrorism including through rapid, practical and effective responses to terrorist threats and attacks; intelligence and information sharing; assistance to transport security, immigration and border control; and effective counter-terrorism policies and regulatory frameworks;
10. Strengthening cooperation in capacity building in law enforcement, defence, intelligence and national security in order to respond to terrorist threats;
11. Cooperation, when requested and where possible, in facilitating effective and rapid responses in the event of a terrorist attack. In this regard, the

requesting Party shall have primary responsibility for the overall direction, organization and coordination for such situation.

Intelligence Cooperation

12. Cooperation and exchange of information and intelligence on security issues between relevant institutions and agencies, in compliance with their respective national legislation and within the limits of their responsibility.

Maritime Security

13. Strengthening bilateral cooperation to enhance maritime safety and to implement maritime security measures, consistent with international law;
14. Enhancing existing Defence and other cooperation activities and capacity building in the area of aerial and naval maritime security in accordance with international law.

Aviation Safety and Security

15. Strengthening bilateral cooperation in the field of capacity building to enhance civil aviation safety and security.

Proliferation of Weapons of Mass Destruction

In recognition of the Parties shared commitment not to develop, produce, otherwise acquire stockpile, retain or use nuclear weapons or other weapons of mass destruction,

16. Co-operate to enhance measures for preventing the proliferation of weapons of mass destruction and their means of delivery including through strengthened national export controls in accordance with their respective national laws as well as in international law;
17. Strengthening bilateral nuclear cooperation for peaceful purposes, including to further the objective of non-proliferation of weapons of mass destruction and strengthen international nuclear safety and security through enhanced standards, in accordance with international law.

Emergency Cooperation

18. Cooperation, as appropriate and as requested, in facilitating effective and rapid coordination of responses and relief measures in the event of a natural disaster or other such emergency. The Party requesting the assistance shall have primary responsibility for determining the overall direction for emergency response and relief operation;

19. Cooperation in capacity building for disaster preparedness and response.

Cooperation In International Organizations on Security-Related Issues

20. Consultation and cooperation on matters of shared interest on security related issues in the United Nation, other international and regional bodies.

Community Understanding and People-to-People Cooperation

21. Endeavoring to foster contracts and interaction between their respective institutions and communities with a view to improving mutual understanding of security challenges and responses to them.

ARTICLE 4 CONFIDENTIALITY

1. The Parties shall protect confidential and classified information received pursuant to the framework of this Agreement in accordance with their respective national laws, regulations and policies.
2. Notwithstanding Article 10, should this Agreement terminate, each Party shall continue to comply with the obligation set out in paragraph 1 to information to which it had access under the Agreement.

ARTICLE 5 INTELLECTUAL PROPERTY

The Parties agree that any intellectual property arising under the implementation of this Agreement shall be regulated under separate arrangement.

ARTICLE 6 IMPLEMENTING MECHANISM

1. The Parties shall take any necessary steps to ensure effective implementation of this Agreement, including through conclusion of separate arrangements on specific areas of cooperation.
2. For the purpose of this Article, the Parties shall meet on a regular basis under the existing mechanism of the Indonesia-Australia Ministerial Forum (IAMF) to review and give direction to the activities under this Agreement.

ARTICLE 7 FINANCIAL ARRANGEMENT

Any expenses incurred in the implementation of this Agreement will be met by the Party incurring the expense, unless otherwise mutually decided.

ARTICLE 8
SETTLEMENT OF DISPUTES

Disputes arising in relation to the interpretation on implementation of this Agreement shall be settled amicably by mutual consultation or negotiation between the Parties.

ARTICLE 9
AMENDMENT

This Agreement may be amended in writing by mutual consent by both Parties. Any amendment to this Agreement shall come into force on the date of later notification by either Party of the completion of its ratification procedure for the amendment.

ARTICLE 10
ENTRY INTO FORCE, DURATION AND TERMINATION

1. The Agreement shall enter into force on the date of receipt of the last notification by which the Parties notify each other that their internal requirements for the entry into force of this Agreement have been fulfilled.
2. This Agreement shall remain in force until one Party gives writing notice of its intention to terminate it, in which case this Agreement shall terminate six months after receipt of the notice of termination.
3. Termination of this Agreement shall not affect the validity or the duration of an arrangement made under the present Agreement until the completion of such arrangement, unless otherwise decided by mutual consent.

IN WITNESS WHEREOF, the undersigned being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at ... on this ... day of ... in the year of ... in 2 (two) original copies in both Indonesian and English languages, all texts being equally authentic. In case of divergence in the interpretation, the English text shall prevail.

**For the Government of
The Republic of Indonesia**

**For the Government of
Australia**

Lampiran II:

UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 47 TAHUN 2007
TENTANG
PENGESAHAN PERJANJIAN ANTARA REPUBLIK INDONESIA DAN
AUSTRALIA TENTANG KERANGKA KERJA SAMA KEAMANAN
(*AGREEMENT BETWEEN THE REPUBLIC OF INDONESIA AND AUSTRALIA
ON THE FRAMEWORK FOR SECURITY COOPERATION*)

DENGAN RAHMAT TUHAN YANG MAHA ESA

PRESIDEN REPUBLIK INDONESIA,

- Menimbang: a. bahwa hubungan luar negeri yang dilandasi politik bebas aktif merupakan salah satu perwujudan dari tujuan Negara Kesatuan Republik Indonesia yaitu melindungi segenap bangsa dan seluruh tumpah darah Indonesia, memajukan kesejahteraan umum, mencerdaskan kehidupan bangsa dan ikut serta melaksanakan ketertiban dunia yang berdasarkan kemerdekaan, perdamaian abadi, dan keadilan sosial;
- b. bahwa sebagai dua negara bertetangga, Indonesia dan Australia perlu meningkatkan hubungan bilateral dalam berbagai bidang, termasuk kerja sama dalam bidang politik dan keamanan;
- c. bahwa untuk memperkuat hubungan bilateral dan kerja sama kedua negara, Pemerintah Republik Indonesia dan Pemerintah Australia telah menyepakati Perjanjian antara Republik Indonesia dan Australia tentang Kerangka Kerja Sama Keamanan (*Agreement between the Republic of Indonesia and Australia on*

the Framework for Security Cooperation) yang ditandatangani pada tanggal 13 November 2006 di Mataram, Lombok, Nusa Tenggara Barat;

- d. bahwa berdasarkan pertimbangan sebagaimana dimaksud dalam huruf a, huruf b, dan huruf c perlu mengesahkan Perjanjian antara Republik Indonesia dan Australia tentang Kerangka Kerja Sama Keamanan (*Agreement between the Republic of Indonesia and Australia on the Framework for Security Cooperation*) dengan Undang-Undang;

Mengingat: 1. Pasal 5 ayat (1), Pasal 11, Pasal 20, dan Pasal 30 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;

2. Undang-Undang Nomor 37 Tahun 1999 tentang Hubungan Luar Negeri (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 156, Tambahan Lembaran Negara Republik Indonesia Nomor 3882);

3. Undang-Undang Nomor 24 Tahun 2000 tentang Perjanjian Internasional (Lembaran Negara Republik Indonesia Tahun 2000 Nomor 185, Tambahan Lembaran Negara Republik Indonesia Nomor 4012);

Dengan Persetujuan Bersama

DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA

dan

PRESIDEN REPUBLIK INDONESIA

MEMUTUSKAN:

Menetapkan: UNDANG-UNDANG TENTANG PENGESAHAN PERJANJIAN ANTARA REPUBLIK INDONESIA DAN AUSTRALIA TENTANG KERANGKA KERJA SAMA KEAMANAN (*AGREEMENT BETWEEN THE REPUBLIC OF INDONESIA AND AUSTRALIA ON THE FRAMEWORK FOR SECURITY COOPERATION*).

Pasal 1

Mengesahkan Perjanjian antara Republik Indonesia dan Australia tentang Kerangka Kerja Sama Keamanan (*Agreement between the Republic of Indonesia and Australia on the Framework for Security Cooperation*) yang telah ditandatangani pada tanggal 13 November 2006 di Mataram, Lombok, Nusa Tenggara Barat yang salinan naskah aslinya dalam bahasa Indonesia dan bahasa Inggris sebagaimana terlampir dan merupakan bagian yang tidak terpisahkan dari Undang-Undang ini.

Pasal 2

Undang-Undang ini mulai berlaku pada tanggal diundangkan. Agar setiap orang mengetahuinya, memerintahkan pengundangan Undang-Undang ini dengan penempatannya dalam Lembaran Negara Republik Indonesia.

Disahkan di Jakarta

pada tanggal 18 Desember 2007

PRESIDEN REPUBLIK INDONESIA,

DR. H. SUSILO BAMBANG YUDHOYONO

Diundangkan di Jakarta

pada tanggal 18 Desember 2007

MENTERI HUKUM DAN HAK ASASI MANUSIA

REPUBLIK INDONESIA,

ANDI MATTALATTA

LEMBARAN NEGARA REPUBLIK INDONESIA TAHUN 2007 NOMOR 167

PENJELASAN
ATAS
UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 47 TAHUN 2007
TENTANG
PENGESAHAN PERJANJIAN ANTARA REPUBLIK INDONESIA DAN
AUSTRALIA TENTANG KERANGKA KERJA SAMA KEAMANAN
(*AGREEMENT BETWEEN THE REPUBLIC OF INDONESIA AND AUSTRALIA
ON THE FRAMEWORK FOR SECURITY COOPERATION*)

I. UMUM

Hubungan antara Indonesia dan Australia memiliki sejarah yang cukup panjang sejak zaman perjuangan kemerdekaan Indonesia. Australia merupakan salah satu dari sejumlah negara di dunia yang pertama mengakui hak Indonesia untuk merdeka.

Dalam perkembangannya, hubungan bilateral antara Indonesia dan Australia mengalami pasang surut. Hal tersebut terjadi karena berbagai perbedaan yang ada di antara kedua negara, antara lain, perbedaan yang terkait dengan sistem politik, kondisi sosial, ekonomi, dan kebudayaan. Namun, fakta geografis yang menunjukkan bahwa kedua negara merupakan negara bertetangga menjadi faktor yang mendorong perlunya kedua negara untuk berinteraksi secara kondusif guna menjaga stabilitas kawasan.

Mengingat bahwa kedua negara menghadapi permasalahan dan tantangan bersama yang mempengaruhi keamanan kedua negara, Indonesia dan Australia perlu melakukan kerja sama dalam bidang keamanan dengan prinsip kesetaraan dan saling menguntungkan. Berdasarkan hal tersebut, Pemerintah Indonesia dan Pemerintah Australia telah menandatangani Perjanjian tentang Kerangka Kerja Sama Keamanan (*Agreement between the Republic of*

Indonesia and Australia on the Framework for Security Cooperation) pada tanggal 13 November 2006 di Mataram, Lombok, Nusa Tenggara Barat.

Perjanjian ini mempunyai arti penting dalam mempererat hubungan bilateral antara Indonesia dan Australia karena memuat sejumlah prinsip dasar pelaksanaan hubungan bilateral kedua negara. Hal ini juga akan menandai era baru dalam hubungan kedua negara sehingga berbagai permasalahan sensitif dan pelik di antara kedua negara dapat dihadapi dengan suatu landasan yang lebih kuat dan mempunyai tolok ukur yang jelas.

Prinsip yang menjadi dasar pelaksanaan hubungan bilateral kedua negara adalah:

- a. kesetaraan dan saling menguntungkan;
- b. saling menghargai dan mendukung kedaulatan, integritas wilayah, kesatuan nasional, dan kemerdekaan politik;
- c. tidak mencampuri urusan dalam negeri masing-masing;
- d. tidak mendukung atau berpartisipasi dalam segala bentuk kegiatan, baik yang dilakukan oleh orang dan/atau lembaga, yang mengancam stabilitas, kedaulatan dan/atau integritas wilayah Pihak lain, termasuk menggunakan wilayahnya untuk melakukan kegiatan separatisme;
- e. menyelesaikan sengketa secara damai; dan
- f. tidak menggunakan ancaman atau menggunakan tindakan kekerasan terhadap integritas wilayah atau kemerdekaan politik Pihak lain.

Perjanjian ini akan memperkuat kerja sama dalam bidang keamanan yang selama ini telah berlangsung dan menjadi dasar bagi peningkatan kerja sama dalam bidang keamanan yang menjadi kepentingan bersama.

Yang dicakup dalam Perjanjian ini meliputi kerja sama dalam bidang:

- a. pertahanan;

- b. penegakan hukum;
- c. pemberantasan terorisme;
- d. intelijen;
- e. keamanan maritim;
- f. keselamatan dan keamanan penerbangan;
- g. proliferasi senjata pemusnah masal;
- h. tanggap darurat;
- i. pada organisasi multilateral mengenai keamanan; dan
- j. peningkatan saling pengertian antarpersonal dan antarmasyarakat.

Meskipun mencakup kerja sama dalam bidang pertahanan, Perjanjian ini bukan merupakan suatu pakta militer atau mengarah pada pembentukan pakta militer.

Dalam rangka memastikan pelaksanaan perjanjian ini secara efektif, Indonesia dan Australia sepakat untuk melakukan pertemuan berkala dalam kerangka Forum bilateral yang ada, yaitu *Indonesia-Australia Ministerial Forum (IAMF)*.

II. PASAL DEMI PASAL

Pasal 1

Cukup Jelas

Pasal 2

Cukup Jelas

TAMBAHAN LEMBARAN NEGARA REPUBLIK INDONESIA NOMOR 4795

Lampiran III:

**JOINT UNDERSTANDING ON A CODE OF CONDUCT
BETWEEN THE REPUBLIC OF INDONESIA AND AUSTRALIA
IN IMPLEMENTATION OF THE AGREEMENT BETWEEN
THE REPUBLIC OF INDONESIA AND AUSTRALIA ON
THE FRAMEWORK FOR SECURITY COOPERATION
("THE LOMBOK TREATY")**

The Government of the Republic of Indonesia and the Government of Australia (hereinafter referred to as the "Parties");

Reaffirming and pursuant to the Agreement Between the Republic of Indonesia and Australia on the Framework for Security Cooperation of 13 November 2006 ("The Lombok Treaty");

Building upon the purposes and principles enshrined in Articles 1 and 2 of the Lombok Treaty;

Reaffirming also the purposes and principles of the Charter of the United Nations;

Reaffirming further the human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights and relevant international human rights treaties;

Have agreed on the following Joint Understanding on a code of conduct:

1. The Parties will not use any of their intelligence, including surveillance capacities, or other resources, in ways that would harm the interests of the Parties.

2. The Parties will promote intelligence cooperation between relevant institutions and agencies in accordance with their respective national laws and regulations.

In implementation of the above and within the framework of the annual meeting of the Ministers for Foreign Affairs of the Parties, the Heads of intelligence agencies of the Parties shall meet and consult on a regular basis.

This Joint Understanding on a code of conduct will come into effect upon signing.

Done at Bali on 28th of August 2014 in 2 (two) original copies in both Indonesian and English languages, each text being equally authentic. In case of divergence in the interpretation, the English text shall prevail.

**For the Government of
The Republic of Indonesia**

**For the Government of
Australia**