

## CHAPTER I

### INTRODUCTION

#### A. BACKGROUND

One of the most significant geopolitical developments in the past several years has been leak by Edward Snowden regarding the breadth and depth of electronic surveillance undertaken by the U.S. National Security Agency (NSA), the United Kingdom's Government Communications Headquarters (GCHQ), and other states' intelligence apparatuses. These revelations have distressed many state leaders, elites, and foreign citizens who have been subjects to this surveillance.

One source of their outrage is the belief that the surveilling government have violated basic expectations of privacy. Another problem is that one obvious source of regulation that is International law has little to say about foreign surveillance. States have tended to regulate the surveillance of their own citizens more stringently than that of foreign nations. But as states rapidly increase their technological capabilities to collect electronic intelligence in far-flung geographies, this lack of regulation of foreign surveillance becomes more fraught.<sup>1</sup>

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<sup>1</sup>Ashley Deeks, *An International Legal Framework for Surveillance*, Public Law and Legal Theory Research Paper Series 2014-53, University of Virginia School of Law, September 2014. p. 293.

Australian intelligence tried to listen into Indonesian president Susilo Bambang Yudhoyono's mobile phone, material leaked by NSA whistleblower Edward Snowden reveals. Documents obtained by the ABC and Guardian Australia, from materials leaked by the former contractors at the US National Security Agency, show that Australian intelligence attempted to listen into Mr. Yudhoyono's telephone conversations on at least one occasion and tracked activity on his mobile phone for 15 days, in August 2009.

The top-secret documents are from Australia's electronic intelligence agency, the Defence Signals Directorate (now called the Australian Signals Directorate), and show for the first time how far Australian spying on Indonesia. has reached.<sup>2</sup>

Australia's spy agencies have attempted to listen in on the personal phone calls of the Indonesian president, Susilo Bambang Yudhoyono, and have targeted the mobile phones of his wife, senior ministers and confidants, a top-secret document from whistle-blower Edward Snowden reveals. The document, dated on August 2009, names the president and nine of his inner circle as targets of the surveillance, including the vice-president, Boediono, who last week visited Australia. Other named targets include ministers from

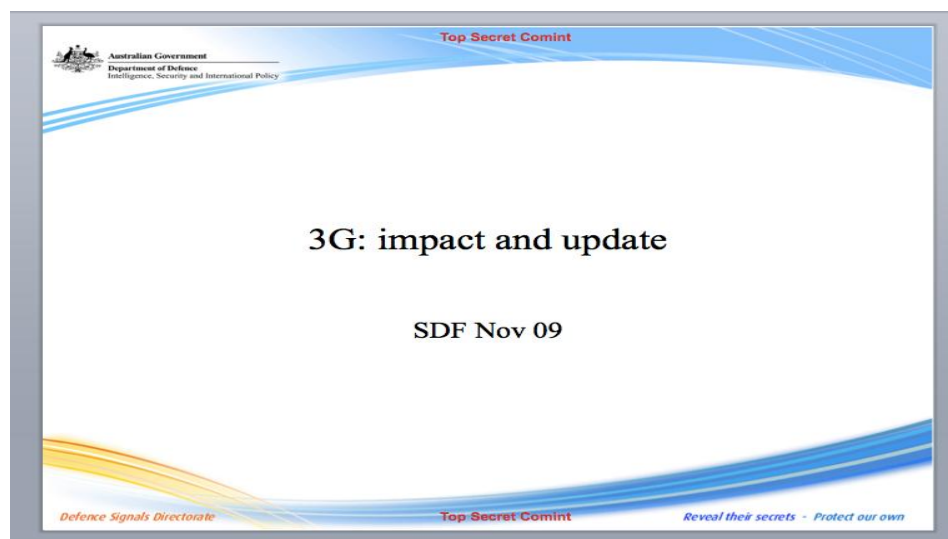
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<sup>2</sup>ABC News: Australia spied on Indonesian President Susilo Bambang Yudhoyono, leaked Edward Snowden documents reveal, written by National Defence Correspondent Michael Brissenden taken from <http://www.abc.net.au/news/2013-11-18/australia-spied-on-indonesian-president-leakeddocuments-reveal/5098860> accessed on February 10<sup>th</sup>, 2015 at 2:26 p.m

the time who were possibly become candidates in the following year's Indonesian presidential election, and the first lady, Kristiani Herawati, also known as Ani Yudhoyono.<sup>3</sup>

On Monday, November 18<sup>th</sup>, 2013, daily Britain, The Guardian, and daily Australia, The Sydney Morning Herald, reported that ten senior ministers of Indonesia were intercepted by the US Government through Australia. The report refer to documents from the former US intelligence agency contractor, Edward Snowden. In one of the document entitled “3G Impact and Updates” listed ten name the type of cell phone complete with Indonesian officials that they use. The action was conducted in 2009.

The slides by the Australian Signals Directorate (ASD)<sup>4</sup>



<sup>3</sup> The Guardian: Australia’s spy agencies targeted Indonesian President mobile’s phone, written by Ewen MacAskill and Lenore Taylor at <http://www.theguardian.com/world/2013/nov/18/australia-tried-to-monitor-indonesian-presidents-phone> accessed on February 10<sup>th</sup>, 2015 at 2:44 p.m

<sup>4</sup>This slide presentation from November 2009, details mobile phone interception in Indonesia by Australia’s Defence Signals Directorate (now the Australian Signals Directorate), The Guardian article Australia tried to monitor Indonesian president’s phone, November 17<sup>th</sup>, 2013. Available at <https://edwardsnowden.com/2013/11/18/3g-impact-and-update/> downloaded on February 11<sup>st</sup>, 2015 at 2:55 p.m



## 3G rollouts

- Nearly complete in SE Asia
  - UMTS and some CDMA2K
  - UMTS predominates
  - Discussions about LTE
- Coincides with IP core rollouts (WAN)
  - Now seeing NGN roll-outs gathering speed

UMTS Launch Dates		
Country	Operator	Launch Date
Cambodia	Shinawatra	Oct-07
Cambodia	Mobitel	Jul-04
Indonesia	Telkomsel	Sep-06
Indonesia	Excelcomindo	Sep-06
Indonesia	Indosat	Nov-06
Indonesia	Hutchison 3G	Dec-06
Malaysia	Maxis Communications	Jul-05
Malaysia	Celcom	May-05
Malaysia	DIGI	Mar-06
Philippines	SMART	May-06
Philippines	Globe	May-06
Philippines	Digital	Jul-06
Singapore	Singapore Telecommunications	Feb-05
Singapore	StarHub	Apr-05
Singapore	MobileOne	Feb-05
Thailand	CTM	May-08



## IA Leadership Targets + Handsets

Name/Position	Handset	Generation
1 Susilo Bambang Yudhoyono	Nokia E90-1	3G
2 Kristiani Herawati (First Lady)	Nokia E90-1	3G
3 Boediono (new Vice President)	Blackberry Bold (9000)	3G
4 Yusuf Kalla (former Vice President)	Samsung SGH-Z370	3G
5 Dino Patti Djalal (Foreign Spokesman)	Blackberry Bold (9000)	3G
6 Andi Mallarangeng (Domestic Spokesman)	Nokia E71-1	3G
7 Hatta Rajasa (State Secretary)	Nokia E90-1	3G
8 Sri Mulyani Indrawati (MENKO EKON)	Nokia E90-1	3G
9 Widodo Adi Sucipto (MENKO POLKAM)	Nokia E66-1	3G
10 Sofyan Djalil (Minister + Confidant)	Nokia E90-1	3G

Uptake of 3G handsets commenced in  
2<sup>nd</sup> Quarter 2007 – Nokia E90-1



The officials who were intercepted through their phone were the then Indonesian President, Susilo Bambang Yudhoyono (Nokia E90-1), Kristiani Herawati better known as Ani Yudhoyono (Nokia E90-1), Vice President, Boediono (BlackBerry Bold 9000), Dino Pati Djalal, president's foreign affairs spokesman (BlackBerry Bold 9000), Andi Mallarangeng former commentator and television host who was at the time the president's spokesman, and who was later minister for youth and sports before resigning amid corruption allegation (Nokia E71-1), Hatta Rajasa, State Secretary (Nokia E90-1), Sri Mulyani Indrawati, the finance minister (Nokia E66-1) and Sofyan Djalil, the state minister of state enterprises (Nokia E90-1), Widodo Adi Sucipto Menko Polkam (Nokia E66-1).<sup>5</sup>

<sup>5</sup>Nugroho, Riant, 2013, *National Security Policy: Cyber Security Agenda Terkini*, Jakarta, Pustaka Pelajar. p.56.

The slides, produced by the directorate for the US National Security Agency, showed that the operation was lasted for five days in August 2009 and came a month after terrorist bombings in Jakarta that killed seven people, including three Australians. The surveillance included at least one attempted of interception from the president's personal handset and was believed to have been conducted as a part of a long-term spying arrangement with Britain, the US, Canada and New Zealand, known as "Five Eyes".<sup>6</sup>

The spying activity, as reported above, was performed using optical cables SEA-ME-WE-3 lying under the sea which were based in Singapore - not in the telecommunication operator. Because of that, when this issue came up, then who should be aware of it is that in “Business of intelligence”, spying are classified as “something normal” in order to asymmetrical war, with note is not to get caught. Listening to conversations of political elite from the opposing the state, or “political tapping” is a classic method to beat an opponent.

One class conversation determine what policy will be taken by the opposing state. Since the era of primitive tribes, the Greek war, the World war I and II, the cold war, and until now, the economic war, tapping the conversations of political decision makers is a common thing done by the national security agents from both developed countries and some developing

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<sup>6</sup>Ian Mcphedran, *Indons Recall Top Diplomat-Phone-tap Fallout threatens Canberra-Jakarta Relations*, The Courier Mail (Australia), November 19<sup>th</sup>, 2013. Available at <http://e-resources.perpusnas.go.id:2052/ap/academic/?verb=sr&csi=244788> accessed on June 22<sup>nd</sup>, 2015 at 3:23 p.m

countries. The underdeveloped countries were not able to do it, because they do not have the capitals, both technology and human capitals.<sup>7</sup>

Spy scandal crisis Indonesia has recalled its ambassador to Australia amid revelations that Australia bugged Indonesian President Susilo Bambang Yudhoyono's personal mobile phone. Ambassador Nadjib Riphat Kesoema left Canberra within 24 hours for indefinite "consultations" in Jakarta, and Australian diplomats in Indonesia could be expelled.<sup>8</sup>

## **B. RESEARCH QUESTION**

1. How does International Law regulate the case of espionage of Australia to Indonesia?
2. Does Australia break the International Law related to the issue of Espionage?

## **C. RESEARCH OBJECTIVES**

This research aims to learn about the implementation of international law on the espionage case. The researcher also wants to know how the International law may cover espionage cases among states.

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<sup>7</sup>Riant Nugroho, 2013. *Op.Cit.*,p. 58.

<sup>8</sup>The Courier Mail Australia: Indonesia Recall Top Diplomat - Phone-tap fallout threatens Canberra-Jakarta relations, wrtitten by Ian Mcphedran available at <http://eresources.perpusnas.go.id:2056/ap/academic/?verb=sr&csi=244788> accessed on Mei 2<sup>nd</sup>, 2015 7:10 p.m

## **D. BENEFITS OF RESEARCH**

This research would give benefits as follows:

### 1. Theoretically

This research gives benefits to know deeply and to increase the knowledge about the regulations in International Law that applied to the issue of Espionage and what the legal instrument that has been violated by Australia in the case of espionage to Indonesia.

### 2. Practically

This research develops the understanding on how international law regulates the issue of the case of espionage done by Australia to Indonesia. This research will also share and enhance the knowledge regarding to the cyber espionage and international law.

## **E. CHAPTERS OVERVIEW**

This research consists of five chapters: Chapter I: Introduction; Chapter II: Literature Review; Chapter III: Research Methods; Chapter IV: Discussion; Chapter V: Conclusion and Suggestion.

### **Chapter I: Background**

This chapter explained the background of the research, the problems of the research, and the benefit of the research.



## **Chapter II: Literature Review**

This chapter described the definition, kind of Espionage, and international instrument relating to the issue of espionage case Australia to Indonesia.

## **Chapter III: Research Method**

This chapter discussed about the research methods used in this research. This research method consisted of type of research, research approach, data, technique of collecting data, and data analysis. The type of this research is a legal research. The research approach used statute approach, where was conducted by study. This research used material research taken from some literatures consist of primary legal material, secondary legal material, and tertiary legal material. Then, the methods of collecting data in this research was conducted through library research, and was analyzed systematically through evaluative analysis. The last is about overview of the chapter.

## **Chapter IV: Analysis**

In this chapter, the researcher will analyze weather Espionage among states, especialy in the espionage issue of Australia to Indonesia is regulated in International law and how the law enforcement should be done based on International law perspective.

## **Chapter V: Conclusion and Suggestions**

Chapter V is a conclusion. The researcher made a summary of the research, and also review the analysis of the research that answered the problems of research, which was presented in the first chapter of the research