



ESPIONAGE PRACTICE IN CZECH REPUBLIC: THE EFFORT OF DIPLOMATIC LAW VIOLATION BY CHINA AND RUSSIA

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Abstrak

Para diplomat Rusia dan China telah mengintensifkan kegiatan spionase mereka di wilayah Ceko selama 2017. Peningkatan itu disebut turut dipengaruhi oleh misi kedutaan Rusia yang cukup besar di Praha, serta pendanaan yang kuat dari China. Laporan tersebut mengungkapkan, mata-mata China telah berupaya mengintervensi Uni Eropa melalui Ceko. Selain itu juga telah memata-matai kementerian pertahanan dan kementerian luar negeri, serta dalam hal ekonomi dan ilmiah. Rusia, dituduh telah berupaya mengganggu NATO dan Uni Eropa dengan melemahkan masing-masing negara anggotanya. Laporan tersebut mengkhentikan kesalahan informasi dalam situs web dan akusisi perusahaan Ceko oleh investor Rusia sebagai alat yang digunakan Kremlin untuk tujuan spionase. Rusia dan China merupakan negara yang paling bertanggungjawab dan bersalah terhadap Spionase di Republik Ceko dalam perspektif Hukum Internasional, karena peran kedua negara tersebut (Rusia dan China) berakibat buruk terhadap Republik Ceko. Tentu saja para diplomat atau agen rahasia yang melakukan spionase di Republik Ceko telah melanggar hukum diplomatik dan hukum konsuler. Misi kedutaan Rusia yang cukup besar di Praha, serta pendanaan yang kuat dari China merupakan bukti nyata keterlibatan kedua negara tersebut dalam praktik Spionase di Republik Ceko.

Kata kunci: pelanggaran hukum diplomatik; Republik Ceko; spionase.

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I. INTRODUCTION

Relations between countries are currently experiencing ups and downs, the many international problems that have an international impact that cross the boundaries of a country's sovereignty are the trigger for the ups and downs of relations between these countries. The dominant factors that led to the development of the conflict were issues of justice, emancipation, economics, and equally important were issues of domestic defense and security.

Actually, the issue of espionage is not something new in the practice of the state in the international arena, but the problem then is when the espionage practices carried out by a country are exposed, even more so when it is known by many audiences that in fact there are dozens of countries that are victims of practice the country's espionage. Even countries as the international community who are victims of espionage, do not accept this fact. So that vent his anger by conducting a protest note and asking the head of government of the country to give an official statement related to espionage practices carried out by his country (Kadarudin, 2013:208). Therefore, this espionage practice is a complicated problem because it can affect friendship not only to two countries (countries that carry out espionage and countries that are victims of espionage), but also can affect countries that are indirectly victims of espionage, but because of spinase, the country also feels disadvantaged.

Diplomatic law, traditionally used to refer to norms in international law governing the position and function of diplomatic missions determined by countries that have fostered diplomatic relations (L. Dembinski, 1988:1). One of the well-known sources of Diplomatic Law, is the International Agreement, in this case the 1961 Vienna Convention on Diplomatic Relations. Article 3 of the convention states that one of the duties of a diplomatic representative is to collect information on the condition of the recipient country accurately and in a legitimate manner and then report it to the sending country. Making a report about the condition is also referred to as the most basic obligation of a diplomatic representative to the sending country. Provided that the report is obtained in a legitimate manner, so reports from spying results or espionage practices will be considered as information obtained in an illegal manner according to International Law and Customs (Syahmin AK, 2008:93). These illegitimate means by international law are categorized as violations of diplomatic law and consular law, because diplomatic missions and consular missions carried out by a country in another country can cause harm to the country in which the mission is carried out, not to mention withdrawal ambassadors and diplomats as a form of protest by one of the parties who felt disadvantaged due to the practice of espionage, and did not accept what the representatives of other countries had done in his country.

Persona Non-Grata as stipulated in Article 9 paragraph (1) of the 1961 Vienna Convention, is indeed one of the answers provided when diplomatic problems occur between the receiving and sending States. For its use has been carried out by the United Kingdom when the country requested 10 so that the Soviet Union Embassy repatriated

one hundred and five members (Ernest Satow, 1979:21-23), coupled with requests for repatriation on behalf of those considered by the British to carry out espionage practices which were clearly stated in English in Aide Memorie which were submitted to the Business Authority of the USSR Embassy in London (Ernest Satow, 1979:184). The power of attorney of the Uni Soviet (Russia) has received much criticism from other countries, because its actions were not in accordance with the diplomatic mission and consular mission it carried so that diplomatic law and consular law were violated due to the actions of the Russian state representative. not only once has this (the practice of espionage) been protested by countries that feel disadvantaged, but it has been said several times that it has become a habit for Russian diplomats to do so.

As a state device, a diplomat is required to have intelligence sensitivity. However, reporting or information gathering activities in the area of accreditation, is one of the important tasks of a diplomat. The process of gathering information can be done in various ways. Starting from quoting open sources, extracting information from key officials, to act to sneak in the style of secret agents. The information collected also varies. Starting from the political trends of a country, economic conditions, to projections of the country's foreign policy. If necessary, a diplomat is also required to know about the gossip in the cabinet of the placement state government. At the same time, a diplomat is also vulnerable to being the target of intelligence operations. In this case, routine preventive steps are carried out. Good foreign representatives will routinely conduct periodic sweeping on embassy office facilities and use the use of call technology and the delivery of encrypted messages. While for each individual diplomat, must always increase awareness, for example by taking a different route when leaving and returning home (Prayoga Limantara, 2018). This became interesting later, because diplomats as legitimate representatives of a country in carrying out diplomatic missions and consular missions had concerns because they were suspected by law enforcement officials of the country where he was carrying out his duties. Even if the work or diplomatic mission and consular mission carried out are carried out as well as possible without violating diplomatic and consular law, it is not necessarily guaranteed that they will escape the suspicion of the local state, because other diplomats are legitimate representatives of a country that also carry out their duties and the same function in the country violates, of course this will affect all diplomats from that country.

The Czech Intelligence Service said Russian and Chinese diplomats had intensified their espionage activities in the Czech region during 2017. The increase was also said to have been influenced by the Russian embassy's considerable mission in Prague, as well as strong funding from China. "The intensity of intelligence activities by Chinese spies with diplomatic pretexts in Czech and those managed from China has increased sharply", said the Czech Security Information Agency in its annual report 2017. The report revealed that Chinese spies had tried to intervene in the European Union through Czech. In addition, he has also spied on the defense and foreign ministry ministries, as well as in economic and scientific matters (Kompas Online, 2018). The European Union is indeed an organization that is very important in playing the role of

policy implementation in the world, the European Union as a very solid Regional organization (even difficult for other regional organizations such as ASEAN) is an organization that determines every policy issued and run by its member countries, this is none other than the only vote (unanimous) of EU member states in terms of executing policies both at the national level of member countries, organizational levels (European region), as well as international levels that are strategic and decisive.

In the report, it was stated that "China has almost unlimited capital that can be offered to foreign companies in exchange for access to their intellectual property," AFP reported. While Russia, accused of having tried to disrupt NATO and the European Union by weakening each of its member countries. "The size of Russian diplomatic missions and high infiltration by people related to their intelligence services has increased the risks associated with Czech citizens' discretion, namely by politicians and civil servants," the report continued. The report specifies misinformation in the website and acquisition of Czech companies by Russian investors as a tool used by the Kremlin for espionage purposes. The Czech Republic, which was part of Czechoslovak communism before 1989, had a population of 10.6 million. The country has been a member of NATO since 1999 and joined the European Union in 2004. In a presidential election held last January, left-wing veteran politician Milos Zeman was re-elected for his second term. Zeman is known as a pro for Russia and China (Kompas Online, 2018). Based on this explanation, the problem that is to be described in this paper is how is the practice of espionage in the international level?, how is the practice of espionage in the Czech Republic?, and what is the status of Russia and China in the practice of espionage in the Czech Republic according to international law?

II. DISCUSSION

A. Practice of Espionage in the International Level

The practice of spying or espionage, has long been a problem in the dysfunction of Diplomatic and Consular Relations and also Diplomatic immunity inherent within the Diplomatic and Consular itself. Indeed, International Law has provided a *Persona non-Grata* mechanism for the receiving State, but, in many cases, this principle has an impact on the relations between the two States, in fact it is not uncommon to be a tension. This paper will discuss a lot about a result of the misuse of diplomatic missions that become the practice of espionage, and how the dispute settlement beside using the *Persona non-Grata* principle (I. Gst Ngr Hady Purnama Putera and Ida Bagus Putu Sutama, without year). Diplomatic and consular law must be adhered to by all countries without exception, because the law (diplomatic law and consular law) is an international consensus or agreement which reflects the ideal ideals of the state in carrying out international relations. This is a sensitive issue to discuss when the number of violations committed by major countries in carrying out their diplomatic missions and consular missions, one of the violations in question is collecting confidential information of a country in illegal ways or simply referred to as espionage practices.

For more specific intelligence tasks, a country will usually send trained spy agents, both closed and open. In this information and interdependence era, openly assigned intelligence missions are usually carried out through diplomatic functions. In this case, not a few foreign countries put spy agents under the guise of diplomats at the embassy. On the other hand, the host country also generally knows the existence of these 'official' foreign intelligence agents. The assignment of a secret agent as a diplomat in such representation has its own disadvantages and benefits. The main disadvantage is of course from the aspect of freedom of movement. As a registered diplomat, the movements of the secret agent will be easier to monitor. If so, the effectiveness of the implementation of the assignment will depend on the expertise of the agent. Intelligence activities must be packaged in the form of activities that do not invite suspicion from the government and the community (Prayoga Limantara, 2018). The most commonly practiced thing is that open intelligence missions are usually carried out through diplomatic functions, this is of concern in many countries, collecting illegal information from a country in an illegal way not only directly harms the state because it is related to defense strategies and national resilience, policies that will be implemented in carrying out international relations, national policy directions that become very crucial for other countries. But it also harms the state indirectly, because its national self-esteem is humiliated in front of the international community, this is also a strong slap in the country because it is considered that the information defense system is not good enough.

On the other hand, an intelligence agent-diplomat will be able to easily form formal cooperation with the government and local intelligence agencies. In many cases, cooperation between foreign intelligence agencies can be mutually beneficial, especially when facing a joint threat. As a diplomat, the agent will automatically also have diplomatic immunity. A good agent must certainly be able to maximize this privilege in carrying out their main duties. In this case, they must be good at playing in the gray realm tucked into the Vienna Convention, namely between the right to have diplomatic immunity and the obligation to respect local law. At least if their operations are discovered, the worst risks that can be accepted are limited to disclosure of identity and expulsion (Prayoga Limantara, 2018). It is this unequal risk that most countries are unfair, where privileges are owned by legitimate state representatives in carrying out diplomatic duties and their consular mission has immunity but on the other hand when the diplomat commits a violation that is very detrimental to the country of place where he served, the sentence was limited to disclosure of identity and expulsion which in fact depends again on the sending country whether to keep hiring diplomats as diplomats in other countries or if they want to avoid ridicule from other countries.

On the world stage, this event has occurred at least twice in the last six months. In December last year, the White House announced a *persona non-grata*, or expulsion of 35 Russian diplomats in Washington, DC. President Obama at that time was annoyed by Russia's intervention in the 2016 presidential election process. Fortunately this incident which had caused a public upheaval in the United States did not create a bigger crisis. A

similar event also occurred in March. More than 20 countries have expelled Russian diplomats. The action was carried out in protest at Moscow's alleged involvement in the killing of former Russian secret agents in Britain. Predictably, those who were expelled were Kremlin intelligence agents posing as diplomats (Prayoga Limantara, 2018). Diplomatic and consular law violations through a legitimate state representative in carrying out diplomatic missions and consular missions in other countries must be of concern to many parties, especially the United Nations which is a global organization that almost all countries in the world become members, because this is very detrimental to the country where the diplomat is carrying out a mission.

Carry Nadeak recounts how neat the practice of espionage is carried out in a country, not only by diplomats, but also ordinary people (civil society) can become secret agents in finding important information in ways that are illegal in a country, this can be seen in the report which was published in *Majalah Gatra* as follows:

The four pairs of husband and wife are like other families in the United States. They live outside the city to avoid the hustle and bustle of the capital city, diligently attend events at their children's schools, and care about the environment. There was nothing special and attracted attention from their movements until the Federal Bureau of Investigation (FBI) arrested eight people. The neighbors of the four couples were shocked. They did not expect that Richard and Cynthia Murphy, Vicky Pelaez and Juan Jose Lazaro, Donald Heathfield and Tracey Lee Ann Foley, and Michael Zottoli and Patricia Mills were accused of having multiple jobs: spies. In addition to the eight people, the FBI also captured one more person (who had not been revealed) and Anna Chapman. Another person was arrested by the Cypriot authorities at Larnaca Airport when they were about to leave for Budapest. Christopher Metsos, a 54-year-old man, was alleged to be the agent who paid for all the spies in America. Unfortunately, the Cypriot authorities did not imprison this agent after he paid a guarantee of US\$ 33,000.

Metsos then entered the search list because it failed to report its existence on Wednesday last week. Cyprus Minister of Justice, Loucas Louca, acknowledged that the release of the Metsos was carried out through guarantees. "Maybe a mistake," he said. The arrest was the FBI's latest move, after the last seven years paying attention to the movements of all those people. The FBI dropped its members to a number of cities in America, such as New York, New Jersey, and Virginia, to monitor all movements of these agents. The FBI also intervened in the telephone and internet relations of all the spies. FBI conviction began to form when his agents managed to trap Anna Chapman, one of the spies, in a cafe in New York. At that time, FBI agents disguised themselves as Russian agents. This case was handed over to the Manhattan District Court. If proven, 11 people face five to 12 years in prison. However, to get there, the US Prosecutor's Office must work hard to get evidence. No other because until the arrest of the agents, the US Prosecutor's Office had not found evidence that they were carrying out espionage practices.

Then information about how far their operations take place, how much information they get, and what kind of data changes hands to the Kremlin. Does the

information really threaten American security. The FBI only said that the spies had contact with someone who was a member of the Russian delegation at the United Nations. So far, according to information disclosed by the US Attorney General's Office, the agents were tasked with collecting information about nuclear weapons, American policy towards Iran, the leadership of the CIA (Central Intelligence Agency), politics in Congress, and various other information. In order to collect all the data, according to the US Attorney General's Office, the agents are trying to be as close as possible to the environment of decision makers. In practice, 11 people had contact with a high-ranking official at the American National Security Council. They also made contact with nuclear researchers "the land of Uncle Sam". Eleven people who were arrested by the FBI were actually not in the spy category. The difference lies in the diplomatic immunity they get. Official agents obtain the immunity when operating in other countries.

The 11 categorizations of these people are ordinary agents (in Russian it is called illegals). These illegals began to be formed and trained by Soviet Union intelligence after the October 1917 revolution. They were formed because at that time the Soviet Union did not have diplomatic relations with many countries. Operating the illegals is actually risky and costly. Not because they often have to operate in a very long period of time to build false stories (in Russian it is called a legend). For years, even for decades, the illegals were placed in one country before finally being able to gather useful information. But the move to bring down the illegals showed that Moscow was serious in its efforts to get information about the United States. Russia is willing to wait for years before reaping the results and at the same time makes opponents unaware of the danger in sight. The penetration of the illegals was so deep and convincing that their children did not believe that their parents were from Russia.

In carrying out the action, the 11 people were practically not working alone. They know each other and relate to each other regularly. The era of modern technology seems to make their work easier. The use of special software, which is able to move data directly to the intended computer without using common media, is one of them. Such software is used when the agents meet every Wednesday. They usually meet in cafes or other crowded places. Many agents also use social networking sites to send the latest information. Through the site, the images they upload are usually given a special password, then download the agent of the order. But the illegals also continue to use conventional methods in their operations. For example, using passwords when meeting in public places. To ensure an illegals meet the right people, certain sentences are used. "Have we met in Bangkok in June?", For example. Then the interlocutor replied: "I don't remember. But, in those months, I was indeed in Thailand". Included in the conventional method is the use of special ink on paper which is then exchanged during meetings. This combination of methods made the FBI have to work hard for years before being able to open the network.

Responding to news of the arrest, the Russians initially denied that 11 of them were from Russia. Later, the Russian Ministry of Foreign Affairs withdrew from the

official website and acknowledged the citizenship status of the people, even though accompanied by a sentence: everything could happen anywhere. At the same time, the Russian Government alleged that the arrests were planned calculated. "The arrest was aimed at undermining the Serikta bilateral relations with Russia," said Russian Foreign Minister Sergei Lavrov, as reported by The Financial Times. What Lavrov meant was a recent peace agreement signed by President Barack Obama and Russian Prime Minister Dimitry Medvedev in Prague, Czech Republic. The agreement which essentially reduced weapons was a new "zero point" for both countries. After that, relations between the United States and Russia progressed quite rapidly and intimately. When the G-20 conference was held, for example, Obama and Medvedev held a very informal meeting, with a burger main menu. Various topics were discussed by the two leaders, but none involved the issue of spying earlier. Not surprisingly, Nikolai Kovalev, former Director of the Federal Security Service, the successor of the KGB, analyzed the efforts to undermine the peaceful conditions. "They released the destructive virus," Kovalev said.

On various occasions, President Obama always stressed the importance of forgetting the Cold War era between the two countries. "Don't let the ghost of the 20th century follow us until the 21st century," Obama said. Likewise, the Obama administration signaled that it would not take steps to expel Russian diplomats because of the incident. On the contrary, Obama will hand over the entire settlement of the case to the hands of American diplomats and investigators. Obama's reaction is different from what President George W. Bush did when facing a similar problem when he was just number one in America.

When it was proven that Robert Hanssen, a seasoned FBI agent, worked for Russia, Bush expelled 50 Russian diplomats. Bush's move was returned by Moscow by expelling 50 American diplomats. However, two months later, Bush met Vladimir Putin, the President of Russia at the time, and stated that the matter was over.

B. Practice of Espionage in the Czech Republic

The practice of espionage on the Czech Republic Russian and Chinese diplomats have intensified their espionage activities in the Czech region during 2017. The increase is also said to have been influenced by the Russian embassy's considerable mission in Prague, as well as strong funding from China. The report revealed, Chinese spies had tried to intervene in the European Union through the Czech Republic. In addition, he has also spied on the defense and foreign ministry ministries, as well as in economic and scientific matters. Russia, accused of having tried to disrupt NATO and the European Union by weakening each of its member countries. The report specifies misinformation in the website and acquisition of Czech companies by Russian investors as a tool used by the Kremlin for espionage purposes. This is connected with the victory of Milos Zeman in the presidential election in the Czech Republic. In the presidential election held last January, left-wing veteran politician Milos Zeman was re-elected for his second term. Zeman is known as a pro for Russia and China.

C. Status of Russia and China Against Espionage on the Czech Republic According to International Law

Russia and China are the countries most responsible and guilty of espionage in the Czech Republic in the perspective of International Law, because the roles of the two countries (Russia and China) have a negative impact on the Czech Republic. Of course diplomats or secret agents who conduct espionage at the Czech Republic have violated diplomatic and consular law. The mission of the Russian embassy is quite large in Prague, and strong funding from China is clear evidence of the involvement of the two countries in the practice of espionage in the Czech Republic.

Sovereignty is the highest right owned by a country. Sovereignty in this limited sense other than independence also has equality. This means that sovereign countries have the same degree, so it is forbidden to impose its sovereignty on other independent countries (J.G Starke, 2006:209). Respecting each other's sovereignty is something that must be prioritized in diplomatic relations between countries (Ngakan Kompiang Kutha Giri Putra dan I Ketut Sudiarta, without year:3). In foreign relations, extensive information and insight is the main capital in the practice of diplomacy. Collecting information in a country with all legitimate means and analyzing and reporting information to the sending country is not an activity that violates international law. Article 3 paragraph (1) letter d of the Vienna 18 April 1961 Convention states, "Ascertaining, by all means, conditions and developments in the state" that sending countries can report by all means legitimate developments and conditions of the receiving country to the sending country (Syahmin AK, 2008:93). But the act of obtaining information by espionage is prohibited in International Law, because it is considered to be able to disrupt the sovereignty and security of the receiving State (Mohammad Shoelhi, 2001:174). The sovereignty of a country is the most essential thing to be respected in relation to relations between countries or international relations, because the sovereignty of the state is guaranteed by the Charter of the United Nations and a number of other international conventions. violations of state sovereignty can result in a breakdown of diplomatic relations or more severely can be brought to justice at the International Court of Justice (ICJ).

United Nations General Assembly Resolution on Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with Charter of the United Nations No. 2625 Year 1970, emphasized that Every State has the duty to fulfill its good faith obligations under the generally recognized principles and rules of international law. Each State in engaging in cooperation with other States has an obligation to fulfill in good faith its obligations based on the principles and rules of International Law that are generally recognized. The principles in the resolution of the UN General Assembly are general in nature, so that all States must obey and respect them (Ngakan Kompiang Kutha Giri Putra dan I Ketut Sudiarta, without year:3-4). Every country is strictly prohibited from taking actions that can interfere with the harmony of relations between countries, the most often carried out by the state is to seek confidential information from a country in ways that

are illegal or not justified by international law through its diplomats who are legitimate state representatives and has the right to immunity in carrying out diplomatic missions and consular missions. In connection with espionage in the Czech Republic, it is only natural that this has implications for other aspects of state relations, in which the Czech Republic gave countermeasures in other ways in the form of Russian hackers who were extradited to the United States and two telecommunications equipment companies from China, Huawei and ZTE is not involved in the Czech Republic government procurement project. In addition to the alleged tax problems, the tools and services of the two corporations were allegedly used for spying for China.

III. CONCLUSION

The practice of espionage in the international world is generally carried out by a secret agent. The assignment of a secret agent as a diplomat in such representation has its own disadvantages and benefits. The main disadvantage is of course from the aspect of freedom of movement. As a registered diplomat, the movements of the secret agent will be easier to monitor. If so, the effectiveness of the implementation of the assignment will depend on the expertise of the agent. Intelligence activities must be packaged in the form of activities that do not invite suspicion from the government and the local community. Russian and Chinese diplomats have intensified their espionage activities in the Czech region during 2017. The increase was also said to have been influenced by the Russian embassy's considerable mission in Prague, as well as strong funding from China. The report revealed, Chinese spies had tried to intervene in the European Union through the Czech Republic. In addition, he has also spied on the defense and foreign ministry ministries, as well as in economic and scientific matters. Russia, accused of having tried to disrupt NATO and the European Union by weakening each of its member countries. The report specifies misinformation in the website and acquisition of Czech companies by Russian investors as a tool used by the Kremlin for espionage purposes. Russia and China are the countries most responsible and guilty of espionage in the Czech Republic in the perspective of International Law, because the roles of the two countries (Russia and China) have a negative impact on the Czech Republic. Of course, diplomats or secret agents who conduct espionage at the Czech Republic have violated diplomatic and consular law. The mission of the Russian embassy is quite large in Prague, and strong funding from China is clear evidence of the involvement of the two countries in the practice of espionage in the Czech Republic.

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