

PROTECTION OF DIPLOMATIC REPRESENTATIVE BUILDINGS OF FOREIGN COUNTRIES IN RECEIVING COUNTRIES IN TIMES OF ARMED CONFLICT

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Abstract: The purpose of this study is to find out the immunity and diplomatic privileges according to the 1961 Vienna Convention and how to protect the diplomatic representative building when an armed conflict occurs in the recipient country. Immunity and privileges are inherent in diplomatic officials and also the building where the diplomatic representative carries out his duties. Diplomatic representative buildings are granted immunity based on international customs that have been implemented in accordance with international customary rules. Diplomatic representative buildings owned by foreign countries have strong immunity to the jurisdiction of the receiving country legally based on Article 22 of the 1961 Vienna Convention on Diplomatic Relations. The research method used is normative juridical, which is to conduct literature research which is carried out by researching literature materials, both books or journals and secondary data as a basis for research by conducting searches on regulations or conventions and literature related to the problem.

Keywords: *Diplomatic Representative Building, Armed Conflict, State*

Introduction

Diplomatic relations are a relationship that is carried out between [country](#) with other countries to meet the needs of their respective countries. Diplomatic law is certainly inseparable from what is called diplomacy, diplomacy and diplomacy. Diplomacy is a way of communicating between several parties. Meanwhile, diplomacy is an official relationship between countries that is carried out by mutual agreement. A diplomat is defined as a person who is involved in diplomacy¹.

The main function in diplomatic relations is to protect and advance national integrity. Some of the definitions according to experts such as²:

1. According to Sumaryo Suryokusumo, Diplomacy is a political activity and is part of an interrelated and complex international activity, by involving governments and international organizations to achieve their goals, through diplomatic representatives or other organs.
2. According to Sir Victor Wellesley, diplomacy is not a policy, but an effort to influence the policies or views of other countries.
3. According to Nicholas, quality diplomacy and the success of foreign policy do not depend on abstract objectives but on the implementation of real diplomacy through various means, namely by disseminating the policies taken, explaining and negotiating agreements that guarantee state security, both war and

¹ Harisman. Diplomatic Law. Pustaka Prima. Medan 2023. h 5

² Achdijat Sulaeman. ANALYSIS OF INDONESIA-MALAYSIA DIPLOMACY ON BORDER ISSUES. POPULIST JOURNAL. Vol.3, No.5, June 2018. Page 624

peace.

In establishing diplomatic relations between countries, many problems are encountered and cause violations of the provisions of international law, especially those related to the rules for the protection of diplomatic officials and diplomatic representative buildings, especially during the occurrence of armed conflicts in the recipient country. Diplomatic representative buildings owned by foreign countries have strong immunity to the jurisdiction of the receiving country legally based on Article 22 of the 1961 Vienna Convention on Diplomatic Relations. The convention requires the receiving country to take all measures to protect the diplomatic representative building from breach or vandalism. This obligation applies even if the receiving country is in an armed conflict, both international and non-international³.

Literature Review

1. Diplomatic Law

Diplomatic law is used to refer to international legal norms that regulate the position and function of diplomatic missions exchanged by countries that have fostered diplomatic relations. The definition of diplomatic law is expanded because diplomatic law now does not only include diplomatic and consular relations between countries, but also includes the representation of the state in relation to international organizations⁴

2. Diplomatic Representative Building

Buildings or parts of buildings that are used for the purpose of carrying out diplomatic missions in the receiving country in international cooperation relations. Diplomatic representations containing furniture, and property in the building and the vehicles of the representative office are immune to examination, prosecution, binding and confiscation.

3. Country

In essence, the State is a social unity formed by the interaction in which human beings are. Interactions that are thought to occur between individuals belonging to a State have been declared as a sociological element independent of the law, which constitutes the individual unity of a State. As an individual unit, the state needs to have a clear and directed state function to address all individual problems that arise⁵.

4. Armed Conflict

In International Humanitarian Law (IHL), armed conflict includes the use of armed forces between two or more *organized armed groups*, both governmental and non-governmental armed forces⁶. International Humanitarian Law forms much of international public law and consists of rules that in times of armed conflict, seek to protect people who are not or can no longer engage in hostilities, and to limit the tools and means of warfare used⁷.

³ Rusvinna Rizky Hariyanti , Arman Anwar, Dyah Ridhul Airin Daties
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⁴ Harisman. Diplomatic Law. Pustaka Prima. Medan 2023. 7

⁵ Junaedi. The Essence and Function of the State: An Analysis of the Problem of Nationality in Indonesia. Logic: Journal of Multidisciplinary Studies, Vol. 11 Number 01 June 2020. Pages 1-2

⁶ Mirsa Astuti. International Humanitarian Law. UMSU Press. Medan 2024.h 37

⁷ Mahfud. MEASURES TO PREVENT ARMED CONFLICT. UBELAJ Journal, Volume 1 Number 1, October 2016. Page 72.

Method

This paper uses a normative legal research method, which focuses on legal norms. The type of research used in this writing is library research. Library research means research using written documents as data, and the data sources used in this study include primary legal materials and secondary legal materials. Primary legal materials are legal materials that bind or make people obey the law, including legal products that are the subject of study and legal products as a tool for criticism. Secondary legal material includes an explanation of primary legal material in the form of expert doctrines found in books, journals and websites

Results and Discussion

1. Diplomatic Immunity and Privileges According to the 1961 Vienna Convention on Diplomatic Relations

The study of diplomacy flourished after the 1961 Vienna Convention, which explained that the objectives, privileges, and immunities of law were not for the benefit of individuals, but to ensure the efficient implementation of the functions of diplomatic missions on behalf of States⁸.

In Protocol II of the Guidelines for Diplomatic Order of the Republic of Indonesia, it is stipulated that immunity contains two meanings, namely immunity (*Immunity*), and inviolable (*Inviolability*). It cannot be inviolable or inviolable (*Inviolability*) is the diplomat's immunity to the instruments of power of the receiving country and immunity to all adverse disturbances. In this sense, it is contained in the meaning that diplomats have the right to obtain protection from the receiving countries. While immunity (*immunity*) is interpreted as immunity to the jurisdiction of the receiving country, both civil law jurisdiction, state administrative law, and criminal law.

The granting of these immunities and privileges is considered reasonable by countries in the implementation of diplomatic relations, as has been written in the preamble of the 1961 Vienna Convention on Diplomatic Relations, that the granting of these two rights is not for the benefit of the individual diplomatic officer himself but is necessary in order to ensure that the diplomatic official can carry out his duties and functions properly as representatives of his country⁹

In addition, it maintains and protects the interests of the state and its citizens in entering into agreements (*negotiations*) with appropriate assessment and knowledge about conditions in their own country and abroad and organizing treatment agreements (on a reciprocal basis). A diplomat must be able to make reports and analyses on political and economic conditions and provide materials that are important for his country and be able to show appropriate judgment in complex situations¹⁰.

And to facilitate the implementation of the duties of the receiving country in the sending country, diplomatic privileges and immunities are granted. In order to bridge the course of diplomatic activities, Article 22 of the 1961 Vienna Convention on Diplomatic Relations specifically explains that immunity also applies to representative buildings, archives and representative documents. Therefore, it can be said that the diplomatic

⁸ Rendi Prayuda, Rio Sundari. DIPLOMACY AND POWER: AN ANALYTICAL STUDY. Journal of Diplomacy and International Studies. Page 83

⁹ Monique Rashinta Christina Aurora Ginting Munthe. IMMUNITY AND PRIVILEGES OF DIPLOMATIC OFFICIALS IN THIRD STATES ACCORDING TO THE 1961 VIENNA CONVENTION. Lex et Societis Journal Vol. VII/No. 11/Nov/2019

¹⁰ Ireine Tiara Karundeng. THE DUTIES AND FUNCTIONS OF DIPLOMATIC REPRESENTATIVES IN PROTECTING THE INTERESTS OF INDONESIAN CITIZENS IN OTHER COUNTRIES. Lex et Societis Journal Vol. VI/No. 9/Nov/2018. H 47

representative building is inviolable (*inviolable*) including when there is an armed conflict in the receiving country. With the establishment of a diplomatic representative office in a country, it is mandatory for the receiving country to take all necessary steps so that the offices and residences of the diplomatic representatives are free from all obstacles¹¹.

The granting of diplomatic immunity and privileges is based on the principle of reciprocity between countries and this principle is absolutely applied in the framework of:

1. Developing friendly relations between countries, taking into account their different constitutional and socio-cultural systems
2. Not for the benefit of individuals but to ensure the efficient implementation of the duties of diplomatic officials, especially in the duties of the country they represent.

2. Protection of Foreign Diplomatic Representative Buildings in Conflict Countries

Article 1 of the 1961 Vienna Convention letter (i) states that diplomatic representative buildings are buildings or parts of such buildings and the land on which they are erected, regardless of who owns them, which are used for the purposes of diplomatic representation, including the residence of the chief representative. From this provision, it is clearly interpreted that for the purposes of its mission, the sending country, in addition to being able to own it by buying a place to be used as its diplomatic representative, can also rent it. However, the diplomatic representative building will be used only for the purpose of the representative. In other words, the representative buildings and also the residences of diplomatic officials and their families cannot be violated. In practice, officials from the receiving country cannot enter the representative building without the prior approval of the Chief Diplomatic Representative concerned. The receiving country is obliged to take appropriate measures to protect the diplomatic mission building from all forms of harm and damage and to prevent all disturbances and obstacles related to the service and function of such diplomatic officials¹².

Regarding the protection of diplomatic representative buildings in an armed conflict that occurs in the receiving country, the 1961 Vienna Convention on Diplomatic Relations contains legal protection provisions in Articles 22 and 30 paragraph 1 providing protection for diplomatic representative buildings, including the residences of the diplomatic agents in the conflict area. Then in Articles 29 and 37 paragraph 1 it is obligatory for the receiving country to provide privileges and protection from all kinds of disturbances to diplomatic agents and their household parts. In addition, Additional Protocol I of the Geneva Convention (1979) emphasizes the principle of distinction. This is regulated in Article 50 paragraph 1 and paragraph 2 and Article 52 paragraph 1 which contains provisions regarding the protection of civilians, civilian population, and civilian objects.

The 1961 Vienna Convention on Diplomatic Relations has provided for provisions relating to the general recognition of diplomatic immunity which includes the offices of diplomatic representatives. This has been stated in Article 22 of the 1961 Vienna Convention on Diplomatic Relations, namely:

Article 22:

- 1) Mission buildings are inviolable. Officials from the receiving country are prohibited from entering, except with the approval of the head of the mission.
- 2) The receiving country is based on a special obligation to take all measures

¹¹ Boer Mauna, International Law: Definition of Role and Function in the Era of Global Dynamics (Bandung: Alumni, 2008), p. 511

¹² A. Ratna Wulan. IMPLEMENTATION OF DIPLOMATIC IMMUNITY IN THE 1961 VIENNA CONVENTION FROM THE PERSPECTIVE OF SIYASAH DAULIYAH. 'Adliya Journal, Vol. 11, No. 2, June 2017. Page 199

necessary to protect the mission building against breach or destruction and to avoid any disturbance of the peace of the mission or destruction of its dignity.

- 3) The mission building, its equipment and several other items including the mission's transportation equipment are immune to investigation, takeover, binding and execution.

The form of protection that must be provided by the receiving country to the diplomatic representative building is protection inside the diplomatic representative building (*intra rationale*) and protection outside and in the area of the diplomatic representative building (*extra rationale*).¹³

a. Protection inside the Diplomatic Representative Building (*Intra Rationale*)

In fact, the instruments of the recipient country are not allowed to enter the foreign diplomatic representative building, but in certain circumstances can enter an application for entry. Conditions that may provide an opportunity for the receiving country's apparatus to submit an application for entry into the foreign diplomatic representative building, including:

- 1) The devices of the receiving country think that the diplomatic representative office is not functioning as it should.
- 2) Emergency conditions, for example fires, natural disasters, riots, mass raids, and bombings. The purpose of entering the diplomatic representative building is to save human lives that are threatened.

b. Protection in the Environment of the Foreign Diplomatic Representative Building (*Extra Rationale*)

The protection of the environment of the foreign diplomatic mission building in it includes all efforts that can be carried out by the tools of the receiving country so that all members of the diplomatic mission and their families can live in peace, tranquility and comfort. In the event of an armed conflict, diplomatic representative buildings are considered civilian objects that cannot be invaded and are obliged to receive protection. A diplomatic representative is a representative of a sending country that has no direct connection to the ongoing war in a country. Therefore, diplomatic representatives cannot be directly affected by the conflict¹⁴.

The protection of diplomatic representative buildings from attacks that can lower their dignity is certainly the responsibility of every receiving country. If the receiving country is negligent and fails to provide protection to the diplomatic representative building of the sending country, it will give rise to state responsibility. If losses arise caused by *the internationally wrongful acts*, the state is obliged to provide *full reparation*. The types of losses include material and immaterial losses caused by the state's actions. *Full reparation* that can be fulfilled by the state caused by *the internationally wrongful acts* is in the form of restitution, compensation, punishment of the person who should be responsible, apology or *satisfaction* or a combination of all of them¹⁵.

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¹⁴ Syahmin, A.K. Diplomatic Law An Introduction. CV Armico. Bandung. 1988.h 117

¹⁵ Sefriani, International Law (Yogyakarta: Rajawali Pers, 2010).

Conclusion:

In the case of a bomb attack launched by Saudi Arabia's military forces aimed at an arsenal owned by Houthi rebels, it turned out that the bomb attack targeted the Indonesian Embassy Building which was indeed close to the Houthi rebels' arsenal. In this case, it was explained that there was a violation committed by the receiving country against the provisions contained in the 1961 Vienna Convention on Diplomatic Relations. Yemen as the receiving country, although it did not attack the diplomatic representative building of the Republic of Indonesia, but Yemen is considered negligent (omission) in carrying out protection to prevent damage to the diplomatic representative building of the Republic of Indonesia. Therefore, Yemen has violated its obligations under international law as enshrined in the articles of the 1961 Vienna Convention on Diplomatic Relations as it is an act that is wrong under international law. In Article 22, the protection of archives and important documents in Article 24, the protection of official correspondence in Article 27 paragraph (2), the protection of persons of diplomatic missions in Article 29, the protection of members of the mission staff in Article 37 paragraph (2), the protection in the event of an armed conflict in Article 44, and the circumstances in which diplomatic relations between the two countries are severed and the receiving country must continue to protect the mission site in Article 45.

In a case that once happened in Yemen, where at that time in 2015 the Indonesian Embassy building was hit by a weapon that targeted and caused destruction. Therefore, Yemen as the receiving country is considered responsible for the damage that occurred to the diplomatic representative building of the Republic of Indonesia based on the Draft Articles on Responsibility of States for Internationally Wrongful Acts, ILC 2001, which means that there must be legal certainty.

In fact, if legal certainty is associated with legal justice, it will often not be in line with each other. This is because on the one hand, it is not uncommon for legal certainty to ignore the principles of legal justice, and on the other hand, it is not uncommon for legal justice to ignore the principles of legal certainty. If in practice there is a conflict between legal certainty and legal justice, then legal justice must take precedence. The reason is that legal justice is generally born from the conscience of the justice giver, while legal certainty is born from something concrete.

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