

## Analysis of Indonesia-Netherlands Diplomatic and Consular Relations

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### Abstract

*In order to improve the quality of international cooperation, the Indonesian nation must be able to improve the quality and performance of foreign officials so that they are able to carry out proactive diplomacy in all fields to build a positive image of Indonesia in the international world. Through this article, the diplomatic relations between Indonesia and the Netherlands will be analyzed specifically, both diplomatic and consular relations. The result, diplomatic relations between the governments of Indonesia and the Netherlands have been in accordance with Law Number 37 of 1999, but in practice it has not been implemented properly in accordance with the applicable laws and regulations, so on this occasion I will discuss further about diplomatic relations between Indonesia and the Netherlands which had temporarily interrupted by several influencing factors including the revocation of the Dutch embassy in Indonesia named Rob Swartbol due to protests against the execution by the Indonesian government against a Dutch citizen named Ang Kim Soe or vice versa the revocation of the Indonesian embassy in the Netherlands because it will be held consultations by their respective countries, both the Netherlands and Indonesia, on their embassies.*

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### Introduction

The State of Indonesia as an independent and sovereign country, after obtaining recognition both de facto and de jure, has the right to determine its own destiny, including in terms of its foreign policies.<sup>1</sup> As a country, the Indonesian people realize that it is impossible for us to fulfill all our needs without the help of other nations or countries. Therefore, to meet the needs of both the political, economic,

and socio-cultural fields, cooperation is needed in the context of meeting the needs of its citizens and achieving national interests.

Relations between nations or countries must be based on the principle of equality. The Indonesian state in conducting international relations applies a free and active foreign policy which is dedicated to the national interest. This is primarily intended for the benefit of

development in all fields as well as participating in implementing national order. This is primarily intended for the benefit of development in all fields as well as participating in carrying out world order based on freedom, eternal peace, and social justice.

In order to improve the quality of international cooperation, the Indonesian nation must be able to improve the quality and performance of foreign officials so that they are able to carry out proactive diplomacy in all fields to build a positive image of Indonesia in the international world.<sup>2</sup>. Therefore, the role of Indonesian diplomats abroad must really be able to provide the widest possible information to the world community about the real Indonesia. The role of the mass media regarding the unfavorable image of the Indonesian state abroad, must slowly be countered with balanced coverage. In addition, diplomats must also be able to provide protection and defense of Indonesian citizens and interests, and take advantage of every positive opportunity for the national interest.

In the interest of wider international relations and cooperation, both from the political and formal legal aspects, the State of Indonesia has become the 60th member of the United Nations on 28 September 1950.<sup>3</sup>. Like other countries, the State of Indonesia has placed its diplomatic or consular representatives in other countries. In carrying out these international relations, the executive and legislative government bodies are also assisted by diplomatic representatives sent through exchanges between countries. The closer the relationship between a country and another, the diplomatic representative of that country will have an important role. Through this article, the diplomatic relations between Indonesia and the Netherlands will be analyzed specifically, both diplomatic and consular relations.

The problems that formulate in research are “How is the quality of diplomatic and consular relations between Indonesia and the Netherlands?”; “What is the law if in its implementation there are problems in the Indonesia-Netherlands relationship?”

## **CONCEPTUAL FRAMEWORK**

### **International law**

International law is the whole of law which mostly consists of principles and rules of behavior that make the countries concerned feel bound to obey each other's legal rules which include:<sup>4</sup>:

- 1) Legal rules relating to the functions of international organizations or institutions, whether they are relations with individuals, countries, or fellow organizations.
- 2) Certain legal rules relating to individuals and non-state entities insofar as their rights and obligations are important to the majority.

### **Principles of International Law**

The principles of international law relating to issues of territorial jurisdiction adhere to several principles that apply universally, namely:<sup>5</sup>:

- 1) Territorial Principle.  
This principle gives the authority to carry out legal actions that take place in the territory of the state, both public and private.
- 2) Nationality Principle  
This principle gives the authority to carry out legal actions committed by citizens who are abroad.
- 3) Protective Principle  
This principle gives the authority to carry out legal actions for actions that threaten the security of the country.
- 4) Universality Principle Prinsip

This principle gives the authority to carry out legal actions that threaten universal world security.

### **Diplomatic and Consular**

Diplomatic and consular law is essentially a provision of international law that regulates diplomatic relations between countries which are carried out on the basis of mutual agreements as outlined in legal instruments. Both are generally envoys of a particular country, the difference is that diplomatic relations maintain the political interests of the state with central officials who have extraterritorial rights. Meanwhile, the consular post maintains the non-political interests of the state with local officials but does not have extraterritorial rights<sup>6</sup>.

## **ANALYSIS**

### **Diplomatic and Consular Relations between Indonesia and the Netherlands**

In recent years, the Netherlands has participated in assisting in various fields such as maritime, legal, and Indonesian food security<sup>7</sup>. Furthermore, the Netherlands has been helping to improve the business climate in Indonesia and establishing cooperation in the field of science and technology such as conducting university student exchanges. This is intended for all regions in Indonesia, but there are also those targeting special areas

such as Papua and Maluku. Considering that Indonesia has now attained the status of a middle-income country<sup>8</sup>, capital goods and large-scale investments are now independently financed by Indonesia, so the type of cooperation between Indonesia and the Netherlands has the potential to change.

The Government of Indonesia together with the Government of the Netherlands have agreed on a clean development mechanism (CDM) cooperation.<sup>9</sup> the energy sector as an implementation of the Kyoto Protocol in terms of reducing greenhouse gas (GHG) emissions. The Government of Indonesia together with the Government of the Netherlands has also strengthened cooperation in the agricultural sector through the VegIMPACT program<sup>10</sup> namely the program to increase production and marketing of vegetables as a follow-up to the meeting in The Hague which is a priority for bilateral cooperation.

So far, bilateral relations between Indonesia and the Netherlands have been very good. This is reflected in the Indonesia-Netherlands partnership program which is based on the Joint Declaration on Comprehensive Partnership<sup>11</sup> and was ratified in January 2009. In 2010, this bilateral cooperation relationship grew more dynamically seen from the visit of the Indonesian

delegation to the Netherlands which reached more than 4000 people, while in 2009 only 3000 people and Maria van der Hoeven, a Dutch Minister of Economy also attended Indonesia-Netherlands Mixed Commission in March 2010 in Jakarta<sup>12</sup>.

Over time, the economic cooperation between Indonesia and the Netherlands in recent years has strengthened concretely, such as increasing investment, development cooperation and various other technical cooperations, so that Indonesia appears to have an increasingly important position as a partner in economic cooperation such as trade and investment. This is in line with Indonesia's position which is starting to be seen as a middle income country<sup>13</sup>. For the Netherlands, Indonesia can be used as a gateway for marketing its products to Asia. On the other hand, the Netherlands is expected to become a gateway for marketing Indonesian commodity products to Europe.

Throughout 2010, a number of agreements in the fields of education, culture, and economy were successfully reached<sup>14</sup>. In the field of education, there is an increasing number of students studying in the Netherlands and receiving scholarships from the Netherlands/NESO. In the economic sector, there are several aid schemes such as Private Sector Investment (PSI)<sup>15</sup>,

Indonesian Facility (INDF)<sup>16</sup>, and Netherlands Financing for Supporting Infrastructure Development (ORIO)<sup>17</sup>. The Netherlands also sent experts through the Netherlands Senior Experts. In the trade sector, the Indonesia-Dutch trade balance is always a surplus for Indonesia. This achievement is partly due to the active promotion by the Indonesian Embassy through PMI 2010 and participation in international exhibitions such as IHF, PLMA, etc. Based on BKPM data, the total Dutch investment in Indonesia until 2010 was estimated to reach 5 billion USD, 340 projects were implemented, and 11,331 workers were absorbed.<sup>18</sup> This is why the Netherlands ranks second in the realization of FDI investment in Europe after the UK and seventh in the world after Japan, Singapore, Mauritius, United Kingdom, United States and South Korea.<sup>19</sup>

In its implementation, diplomatic relations between Indonesia and the Netherlands have been in accordance with Law No. 37 of 1999 but have not been implemented optimally<sup>20</sup>. Even the diplomatic relations between Indonesia and the Netherlands were interrupted, the Dutch embassy in Indonesia was revoked.

If we observe, the revocation of the Dutch embassy in Indonesia was caused by several things, among others: the Netherlands did not want to de jure recognize the independence

of the Republic of Indonesia, the Netherlands developed the opinion that Indonesia was degrading human dignity due to the implementation of the execution law for drug crimes, and the Netherlands did not want to apologize for the death of more than 1 million Indonesian citizens committed by the Dutch<sup>21</sup>.

From this explanation, it can be said that diplomatic relations between Indonesia and the Netherlands experienced ups and downs. Therefore, there must be an improvement in relations between the Indonesian government and the Netherlands.

### **Legal Implications of Indonesian-Dutch Relations Problem**

Bearing in mind that the granting of such diplomatic immunity is not for individual interests but to ensure the efficient execution of the duties of diplomatic officials, especially those assigned by the sending country, such immunity must be granted reciprocally so that friendly cooperation between sending and receiving countries is reflected.

Diplomatic immunity starts and ends as stipulated in Article 39 paragraph 1 of the 1961 Vienna Convention. Basically, according to the 1961 Vienna Convention, the immunities and privileges will come into effect or begin to enjoy them from the time the diplomat enters the territory of the

receiving country on his way to assume office or if he is already in the territory recipient country, from the moment of his appointment it is notified to the Ministry of Foreign Affairs or other approved ministries<sup>22</sup>.

Not only that the receiving government has given approval to him as an ambassador in the country in which the sending country has given him a diplomatic visa to enter the jurisdiction of the receiving country. In addition, the first arrival of diplomats to the receiving country is always notified immediately to the Ministry of Foreign Affairs. These three factors can implicitly be considered as the basis for the government of the receiving country to grant diplomatic immunity and privileges.

Then the immunities and privileges expire usually when he leaves the country, or at the expiration of a reasonable time or opportunity, which is granted to him to leave the receiving country. Such provisions are contained in the Vienna Convention in Article 32 paragraph 2 which confirms that the immunities and privileges remain in effect until the expiration of an appropriate time. This is a guarantee for the diplomatic representative whose term of office or his duties have ended that he continues to enjoy such treatment, in the event of armed conflict. Such immunities and privileges will remain until a

sufficient time after the completion of their duties.

Diplomatic immunities and privileges shall continue until the diplomat has had adequate time before his departure after completing his duties in a receiving country. However, the receiving country can ask the sending country at any time to withdraw its diplomats if he declares *persona non grata*<sup>23</sup>.

In brief, it can be stated that diplomatic immunities and privileges can be enjoyed by diplomatic officials from the time the person concerned enters the territory of the receiving country, namely on his way to his post. Or if the receiving government has given approval to him as an Ambassador in that country or also if it has granted him a diplomatic visa to enter the jurisdiction of the receiving country. In addition, the first arrival of diplomats to the receiving country has been notified to the Ministry of Foreign Affairs of the receiving country.

And the immunity will end if the tasks have been completed or can also stop during the period of the representative's duty has not been completed. In the event that his duties have been completed, this immunity will expire when the official leaves his post and returns to his country or after the appropriate time limit for leaving his post has passed. Meanwhile, in the event that the term of office has not been completed, this immunity

can end simultaneously with the recall of the official concerned by the government of his country.

Initially, the regulation and implementation of diplomatic law, especially regarding the implementation and acknowledgment of the granting of diplomatic immunities and diplomatic privileges in Indonesia, was based on standard international practice, which applies in practice between countries in exchange of diplomatic representatives. "International custom" itself as stated in Article 38 of the Statute of the International Court of Justice, is considered a fact of general practice accepted as law.

However, the legal basis of this international custom actually causes a lot of conflict, especially for emerging countries. At the time this matter was discussed at the International Law Commission and at Committee VI of the United Nations General Assembly, especially when formulating the draft Article 24 of the Statute of the International Law Commission.

In the further development of international relations, it is deemed necessary to make an international convention which is the basis of written law that can be used by all countries on a reciprocal basis. This trend eventually resulted in the 1961 Vienna Convention on Diplomatic Relations, which was an international law recognition

of the granting of diplomatic immunities and privileges.

For this reason, the granting of diplomatic immunities, which were originally based on standard international customary law, is reflected in state practices in international relations, especially the provisions of local laws. The written International Convention is the 1961 Vienna Convention, so that the provisions for granting diplomatic immunities and privileges have now been recognized internationally as an international law.

Before Indonesia ratified the 1961 Vienna Convention on diplomatic relations, the granting of diplomatic immunity and privileges legally was still based on customary international law. In the early days, the Government of Indonesia in carrying out its international relations, whether diplomatic, consular, bilateral or multilateral, has adhered to the following arrangements:

1. Diplomatic Code of Conduct and Protocol Code of Conduct.
2. Guidelines for the Consul of the Republic of Indonesia and other arrangements regarding the duties and functions of diplomatic and consular officials.

So, the diplomatic function in a political sense is an effort to defend Indonesia's freedom against imperialism in all its forms and manifestations by implementing world order

based on independence, eternal peace and social justice. Serving the national interest in realizing a just and prosperous society. Creating good friendship between countries in realizing the implementation of the duties of diplomatic representative countries.

Ang Kim Soei alias Kim Ho alias Ance Taher alias Tommy Wijaya who was sentenced to death by the Panel of Judges at the Tangerang District Court, Banten, last Monday, January 13, 2003. Exactly at 00.00 WIB January 18 2015, Ang Kim Soei was executed<sup>24</sup>. As a result, the Netherlands recalled its ambassador in Jakarta regarding the execution of their citizens who were involved in drug cases. According to the Ministry of Foreign Affairs, the withdrawal of the ambassador does not mean Indonesia's relations are being disrupted. The withdrawal of the ambassador for the nature of the consultation is normal. The Government of the Republic of Indonesia also plans to recall several ambassadors in early February 2015 for consultations.

The Netherlands recalled its ambassador because the Indonesian government had just executed a Dutch citizen for being involved in a drug case. Ang Kim Soei is a Dutch citizen who was executed by the prosecutor's office. The Netherlands considers the execution of the death penalty against one of its citizens in Indonesia because the drug case

is a form of 'cruelty'. The Netherlands says Ang Kim Soei is the first Dutch citizen to be executed abroad and warns the sentence will 'damage' relations with Indonesia<sup>25</sup>.

Dutch Foreign Minister Bert Koenders assessed that the execution of Dutch citizen Ang Kiem Soe, 62 years old, was a denial of human dignity and integrity. Dutch Foreign Minister Bert Koenders also said he was deeply saddened by the death sentences handed down to the six convicts. The Netherlands has made various efforts to save its citizens. This effort was even carried out by the King of the Netherlands King Willem Alexander and Prime Minister Mark Rutte.

The Netherlands is a country that condemns the execution of two of their citizens, namely Ang Kiem Soe, a Dutch citizen. Ang Kiem Soe was executed after a court in Indonesia found them guilty of drug trafficking. In addition to this person, the government also executed five other people, namely Marco Archer, a Brazilian citizen, Namaona Denis, a Malawian, Daniel Enemu, a Nigerian, Tran Thi Bich Hanh, a Vietnamese citizen, and one Indonesian citizen, Rani Andriani, a woman. from Cianjur<sup>26</sup>.

Jokowi rejected the request for annulment of the death penalty, even though Jokowi respects every other country's efforts against its

citizens, because the same will be done by Indonesia to protect its citizens. As a result of this refusal, the Netherlands withdrew its ambassador from Jakarta. According to the Ministry of Foreign Affairs, the ambassador's withdrawal does not mean that Indonesia's diplomatic relations are being disrupted. The Ministry of Foreign Affairs itself will continue to strive to build communication and improve bilateral relations with the Netherlands. The Ministry of Foreign Affairs considers that the withdrawal of the ambassador is carried out for consultation by the government of the country concerned and this is a common occurrence.

The Ambassador of the Kingdom of the Netherlands to the Republic of Indonesia, Rob Swartbol, is scheduled to return to The Hague soon after being withdrawn by his government as a form of protest over the execution of Ang Kim Soei on Sunday, January 18 2015 at 00.00 WIB. Spokesman for the Dutch Embassy in Jakarta, Nicolaas Schemers, confirmed this.

### **CONCLUSION**

Diplomatic relations between the governments of Indonesia and the Netherlands have been in accordance with Law Number 37 of 1999, but in practice it has not been implemented properly in accordance with the applicable laws and regulations, so on this occasion I will discuss further

about diplomatic relations between Indonesia and the Netherlands which had temporarily interrupted by several influencing factors including the revocation of the Dutch embassy in Indonesia named Rob Swartbol due to protests against the execution by the Indonesian government against a Dutch citizen named Ang Kim Soe or vice versa the revocation of the Indonesian embassy in the Netherlands because it will be held consultations by their respective countries, both the Netherlands and Indonesia, on their embassies.

The legal implications of diplomatic relations between Indonesia and the Netherlands have been in trouble since the withdrawal of the Ambassador of the Kingdom of the Netherlands to the Republic of Indonesia, Rob Swartbol, who is scheduled to return to The Hague soon after being withdrawn by his government as a form of protest over the execution of Ang Kim Soei on Sunday, January 18 2015 this morning at 00.00 WIB. The Netherlands is a country that condemns the execution of two of their citizens, namely Ang Kiem Soe, a Dutch citizen. Ang Kiem Soe was executed after a court in Indonesia found them guilty of drug trafficking. Dutch Foreign Minister Bert Koenders assessed that the execution of Dutch citizen Ang Kiem Soe, 52, was a denial of human dignity and integrity. Dutch Foreign

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