

Analysis of Diplomatic Immunities and Privileges: Case Study of Abuse of Diplomatic Rights by Representatives of North Korean Diplomats

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Abstract

In carrying out a diplomatic mission, a diplomatic representative is granted a right of immunity and privileges in order to be able to carry out missions freely. But in practice, there is an abuse of the rights granted. One of them is North Korea's diplomatic representative to Bangladesh, Son Young Nam, who is known to have abused his rights to gold smuggling. This study aims to find out what are the rights of immunity and privileges obtained by diplomatic representatives and what are the legal consequences of the abuse of immunity rights and privileges, with an example of a case study of gold smuggling by a diplomatic representative of North Korea in Bangladesh. The research method used is a qualitative method with primary data obtained through the search results of journals, documents, and official websites. This research uses National Interest Theory in the analysis. This study shows that after diplomatic representatives receive various immunity rights and privileges, then abuse them, there are three ways that the receiving country can choose in responding to the abuse. Such as the declaration of persona non grata, the removal of immunity and privileges, or the termination of diplomatic relations between the two countries as a last resort.

INTRODUCTION

Every country has an obligation to establish international relations with other countries. This obligation is one of the roles of the state as a legal subject which is intended to maintain the existence of the state itselfⁱ. In addition to achieving domestic national interests, international relations are also carried out to achieve global interestsⁱⁱ. International relations are expected to strengthen relations between countries. One way to create harmonious relations between countries is to establish cooperation. This cooperation is expected to provide benefits for each country that participates in it. In practice, in establishing cooperation, countries will exchange diplomatic missions. The exchange of diplomatic missions

indicates that the two countries are conducting diplomatic relations.

Diplomatic relations themselves can be understood as a relationship established by the two countries with the aim of fulfilling various aspects of the national interests of each country. However, it should be emphasized that before establishing diplomatic relations, there are conditions that need to be met, such as; 1. It is described in the 1961 Vienna Convention Article 2 that in order to establish diplomatic relations, it is required to carry out a Mutual Consent or a joint statement agreed upon by both countries. 2. Diplomatic relations must be established based on reciprocity. More clearly, all matters relating to diplomatic relations are regulated in the 1961 Vienna Conventionⁱⁱⁱ.

After fulfilling the requirements above, the two countries will send each other diplomatic representatives from each country. This diplomatic representative was then given an assignment^{iv}, namely representing their country in the receiving country, maintaining and improving relations between the sending and receiving countries, protecting the interests of their countries and their citizens in the receiving country, negotiating and reporting all developments and conditions in the receiving country to their respective countries^v.

To carry out his duties, a diplomatic representative certainly needs a guarantee so that his diplomatic mission can be achieved freely and smoothly. That way, a diplomatic representative is given an immunity right (Immunity) and privileges (Privileges)^{vi}. However, in several cases, diplomatic representatives were found who were not responsible for abusing these rights. One of them was a diplomatic representative for North Korea to Bangladesh, Son Young Nam, who was arrested for smuggling gold. He was arrested at Dhaka airport in 2015. The gold smuggling carried out by North Korean diplomatic representatives was equivalent to Rp. 18 billion^{vii}.

Son Young Nam was suspected of refusing officers and police who wanted to check his bag. This refusal is based on the reason that he has diplomatic immunity, so that none of the officers or police can check the contents of his bag. After about 4 hours of arguing, Bangladesh airport customs officials discovered that the North Korean diplomatic representative had smuggled 27 kg of gold.

From the description above, it can be seen that the diplomatic representative of North Korea, Son Young Nam, abused the rights of immunity and privileges that had been granted. On the other hand, it can also be seen that although the Bangladeshi authorities are determined to dismantle and prosecute them, it cannot be done because as stipulated in the 1961 Vienna Convention Article 27 paragraph 3 that diplomatic representatives have the right not to go through the baggage inspection process at the airport^{viii}.

The abuse of rights by a diplomatic representative greatly affects relations between the two countries. Where, diplomatic representatives who are supposed to maintain harmony between the two countries, actually destroy it. Relations that have been built for a long time, are destroyed in an instant only because of the lack of responsibility of diplomatic representatives who abuse the rights of immunity and privileges that have been given to facilitate their diplomatic missions in the receiving country.

Thus, this study aims to find out what immunity and privilege rights are obtained by diplomatic representatives and what are the legal consequences of abuse of immunity rights and privileges, with an example of a case study of gold smuggling by a diplomatic representative of North Korea to Bangladesh.

CONCEPTUAL FRAMEWORK

A. Literature Review

The first journal article related to this research is the journal by Heribertus Untung Setyardi with the title "State Obligations Regarding Violations of Diplomatic Privileges and Immunities by Diplomatic Officials". This journal is contained in Justice Et Pax e-Journal of Law at Atma Jaya University Vol. 34 No. 2 (2018). This journal discusses the obligations of the state, whether it is the receiving country or the sending country, that need to be addressed in the event of a violation of the privileges and rights of diplomatic immunity by diplomatic representatives. The research method used is normative juridical. This journal concludes that the obligations that need to be addressed by a country if its diplomatic representative violates the privilege and right of immunity are as follows, the receiving country can declare *persona non grata* and waive the immunity held by the diplomatic representative. The relevance of Heribertus Untung Setyardi's journal with my research is the similarity in the topic of discussion. Where the journal has a topic about state obligations that need to be addressed in the event of a violation of diplomatic privileges and immunity rights by diplomatic representatives. Likewise with my research will discuss the obligations of North Korea and Bangladesh that must be overcome due to cases of abuse of immunity rights and privileges carried out by North Korean diplomatic representatives in Bangladesh for gold smuggling cases. This journal can be used as a reference and

helps me in strengthening the arguments in my research.

The second journal article related to this research is the journal by Jessica, Cindy Lampus with the title "Legal Consequences for Diplomats Who Take Action Against the Law While Carrying Out Duties". This journal is included in the e-Journal of the University of Sam Ratulangi Vol. VIII No. 1 (2020). This journal discusses the duties and obligations of a diplomatic representative, also discusses the legal consequences of diplomatic representatives who act against the law while carrying out their duties. The research method used is normative juridical. This journal concludes that the duty of a diplomatic representative is to represent and protect the interests of his country in the receiving country in accordance with the provisions of international law. Then carry out negotiations, report on the condition and development of the receiving country to the sending country, improve relations between the two countries in the economic, cultural, and scientific sectors. In addition to duties, there are obligations that must be obeyed by a diplomatic representative, namely the obligation to report to the foreign ministry of the receiving country regarding the appointment, arrival, departure, and dismissal of a diplomatic representative and his staff and subordinates. Then, the legal consequence of diplomatic representatives acting against the law while carrying out their duties is that they may be subject to *persona non grata*. This is declared when the receiving country feels that it does not want the diplomatic representative because it provides a

loss for the unlawful act committed. In addition, there is a declaration of immunity carried out by the foreign ministry of the recipient country before declaring *persona non grata*. This date is to limit the immunity of diplomatic representatives. The relevance of the Jessica, Cindy Lampus journal with my research is the similarity in the topic of discussion. Where the journal has topics around the legal consequences of the actions of diplomatic representatives who are against the law while carrying out their duties. Likewise with my research will discuss the legal consequences of the abuse of immunity rights and privileges carried out by North Korean diplomatic representatives in Bangladesh for gold smuggling cases. Meanwhile, the difference between Jessica, Cindy Lampus journal and my research lies in the research method. Where this journal uses normative juridical research methods, while my research will use qualitative research methods with primary data obtained through search results of journals, documents, and official websites. This journal can be used as a reference and helps me in strengthening the arguments in my research.

The third journal article related to this research is the journal by Muhammad Fahmi Hadadi with the title "Analysis of the Actions of the Bangladesh Government Checking the Diplomatic Bag of Son Young Nam, Secretary I of North Korea Bangladesh at Dhaka Airport. Judging from the 1961 Vienna Convention". This journal is included in the Digital Repository of the University of Surabaya (2019).

This journal discusses the Bangladesh government conducting a search of Son Young Nam's suspicious diplomatic bag. The research method used is normative juridical. This journal has the conclusion that the Bangladesh government's action in searching Son Young Nam's diplomatic bag did not violate the rules of immunity rights and privileges of diplomatic representatives because Son Young Nam has been proven by Bangladesh customs staff to have smuggled 27 kg of gold. The search carried out was deemed to have been in accordance with the procedure and Son Young Nam was found guilty of abusing the diplomatic rights given to him for the smooth running of his diplomatic mission. The relevance of Muhammad Fahmi Hadadi's journal with my research is the similarity in the topic of discussion. Where the journal has a topic about the chronology of events, how Son Young Nam as the diplomatic representative of North Korea in Bangladesh was caught smuggling 27 kg of gold, and how the Bangladesh government carried out searches in accordance with the procedures set out in the 1961 Vienna Convention. Likewise with my research. This journal can be used as a reference and helps me in strengthening the arguments in my research.

B. Theoretical Review

National Interest

National interest is defined by various experts in International Relations. One of them by Hans J Morgenthau, who defines the

National Interest as a minimum ability of a country to protect and defend its physical, political, and cultural identity from interference from other countries^{ix}. According to him, a country can achieve the National Interest by conducting diplomatic or conflict. The National Interest stated by Morgenthau leads to the concept of power, so that if a country has stronger power, it will be easier for the country to achieve its National Interest. Simply put, the National Interest can be understood as the goal of a country to be achieved to meet the country's national needs.

Based on the explanation above, the reason the author chose to use the concept of the National Interest is that North Korea and Bangladesh in establishing diplomatic relations are based on the desire to achieve the national interests of each country. Although along the way, the cooperation between North Korea and Bangladesh experienced problems, fortunately, these problems can be resolved and do not completely damage diplomatic relations between the two countries.

ANALYSIS

A. Immunities and Privileges

Each diplomatic representative will be granted immunity and privileges for the smooth running of his diplomatic mission. The granting of these rights is the result of a long history of diplomacy. In 1706, there was a bill formed by the British government, which was then submitted to the parliamentary assembly with the content that every diplomatic

representative should be considered sacred and inviolable, and free from civil and criminal jurisdiction^x. The draft law was ratified and valid until before the creation of a convention that regulates in detail diplomatic relations, including arrangements for granting immunity rights and privileges for diplomatic representatives. In fact, every country has full power in regulating the law of the right of immunity and diplomatic privileges as long as it does not conflict with international law. This is based on considerations of sovereignty and the principle of reciprocity between countries. After going through a long history of diplomacy, international law through the 1961 Vienna Convention Articles 22 to 36 describes in detail the rights of immunity and privileges granted to diplomatic representatives^{xi}.

The rights of immunity include, firstly, personal immunity, namely, as long as the diplomatic representative is in the territory of the receiving country, he cannot be arrested or detained in a case, the diplomatic representative has immunity over himself. Personal immunity also includes being given the protection and guarantee of freedom of movement and travel in the territory of the receiving country, immunity to the private residence of diplomatic representatives such as property, property, and diplomatic archives. In addition, personal immunity is also granted to diplomatic bags that have been labelled diplomatically, so that no one can open, inspect, and search the bag^{xii}.

Second, jurisdictional immunity. Diplomatic

representatives are also granted free immunity from criminal and civil jurisdiction. This immunity is absolute, so diplomatic representatives cannot be punished under any conditions and cannot be prosecuted in all aspects, both civil and administrative.

Third, the immunity of diplomatic family members. In addition to getting immunity for themselves, diplomatic representatives get immunity, which is also granted to members of their families. This right of immunity can be enjoyed if the family member is not a native citizen of the receiving country and if the family member lives with a diplomatic representative. However, it should be emphasized that the immunity rights granted to family members are limited and not as broad as diplomatic representatives themselves.

Fourth, immunity of premises and residence of diplomats. The immunity of this foreign embassy building cannot be contested, even the government of the receiving country is prohibited from entering the mission building except with the approval of the diplomatic representative of the sending country. Inviolability or inviolability has two different aspects, namely, first, as mentioned above that foreign embassies for missions may not be entered by people from the receiving country without their consent and interest. Vehicles, furniture, and all things that are on the land of the building cannot be contested. Second, the receiving country is obliged to provide protection for foreign diplomatic buildings from all damage, threats, and

disturbances to the smooth running of diplomatic missions. This protection is a form of maintaining the dignity and the dignity of the mission of the diplomatic representative of the sending country.

Next is the privilege attached to a diplomatic representative. First, privileges are exempt from taxes. Such as income taxes, central, local, and municipal taxes, personal property taxes are movable or not. This privilege can also be enjoyed by family members and staff under diplomatic representatives registered with the foreign ministry in the sending country^{xiii}.

Second, the privilege of being free from Customs and Baggage. In sending an item, whether, for diplomatic or personal purposes, diplomatic representatives are exempted from Customs, including baggage belonging to diplomatic representatives who will pass the customs officer's check.

Third, privileges are free from social security obligations. It means that diplomatic representatives are freed from social activities, including security, that apply in the territory of the receiving country. Diplomatic representatives do not need to participate in social security and are required to focus on their diplomatic missions.

Fourth, the privilege of being free from private, public, and military service. At the 1961 Vienna Convention, it is stipulated those diplomatic representatives will be exempt from all services in force in the receiving country, whether private, public, or military.

B. Abuse of Rights

As mentioned above, a diplomatic representative will be given the right of immunity and privileges to facilitate the journey of his diplomatic mission. However, in practice, there often abuses of the rights that have been granted. According to the Big Indonesian Dictionary, abuse is defined as a process, method, act of abusing or misappropriating. For example, a leader who acts arbitrarily is an example of an abuse of power. Likewise with a diplomatic representative, if he commits an act that is not in accordance with his function, then he takes refuge with the immunity rights and privileges he has, then the act is included in the abuse of the immunity rights and privileges granted^{xiv}.

If abuse occurs, there are three ways that can be chosen to respond to the abuse. For the receiving country, the abuse of immunity and privilege rights can be responded to by declaring *persona non grata* or returning the diplomatic representative to the sending country, removing the immunity and privileges, and severing diplomatic relations between the two countries as a last resort^{xv}.

Abuse by diplomatic representatives will have a bad impact on relations between the two countries, namely the sending country and the receiving country. It would certainly be very detrimental both formally and materially^{xvi}. As it is well known that establishing a relationship between countries is not easy, diplomatic representatives who are supposed to maintain harmony

between the two countries, actually destroy it. Relations that have been built for a long time, are destroyed in an instant only because of the lack of responsibility of diplomatic representatives who abuse the rights of immunity and privileges that have been given to facilitate their diplomatic missions in the receiving country.

To compensate, the sending country must be held responsible by conducting compensation or diplomatic negotiations, in some cases these negotiations will reach the realm of the courts. In addition, the sending country can also satisfy itself by making an official apology by ensuring that the same problem will not be repeated^{xvii}.

C. Case Study of Abuse of Diplomatic Rights by Representatives of North Korean Diplomats

The case of "Smuggling of Gold Perpetrated by the Diplomatic Representative of North Korea for Bangladesh" will be used as an example of the abuse committed by a diplomatic representative after receiving the right of immunities and privileges in the receiving country.

The gold smuggling carried out by Son Young Nam, secretary I of North Korea's diplomatic mission to Bangladesh, occurred as soon as he arrived at the Hazrat Shahjalal International Airport, in Dhaka in March 2015. At first, Son Young Nam was suspected of refusing airport officials who wanted to check his bag. This refusal is based on the reason that he has a red passport or diplomatic immunity

and privileges that protect his diplomatic bag. So that no one can check the contents of the bag. After about 4 hours of arguing, customs officials in Dhaka, Bangladesh airport discovered that the North Korean diplomatic representative had smuggled 27 kg of gold into his diplomatic bag. The gold smuggling carried out by North Korean diplomatic representatives was equivalent to Rp. 18 billion. In this case, Son Young Nam was proven to have committed an act that violated Bangladesh's national law, namely carrying jewellery that exceeds a maximum capacity of 2 kg and violating the provisions on the use of diplomatic bags which are not used for diplomatic purposes but for personal interests^{xviii}.

Under the Bangladesh law, North Korean diplomatic representatives can be fined, life imprisonment, or the death penalty^{xix}. However, the immunity and privileges that are still inherent in him make Son Young Nam unable to be subject to these penalties. So that Bangladesh, as the receiving country cannot prosecute or prosecute Son Young Nam on the spot^{xx}. By doing so, Bangladesh asked the North Korean side to sue him and report what charges North Korea would bring against him. Son Young Nam was declared *persona non grata* and was found to have returned to his home country a week after the gold smuggling case occurred^{xxi}.

The abuse carried out by Son Young Nam as North Korea's diplomatic representative in Bangladesh is to abuse the right of immunity and privileges that he gets regarding diplomatic bags that cannot be opened and detained.

Knowing that, he abused it by smuggling 27 kg of gold in his diplomatic bag. Son Young Nam thinks that with the rights he has, Dhaka airport officials will not check the contents of his diplomatic bag.

D. Legal Consequences of Abuse of Diplomatic Rights

If abuse occurs, there are three ways that can be chosen to respond to the abuse. For the receiving country, the abuse of the right of immunity and privilege can be responded to by declaring *persona non grata* or returning the diplomatic representative to the sending country, removing the immunity and privileges, and severing diplomatic relations between the two countries.

In accordance with the 1961 Vienna Convention, the receiving country can declare *persona non grata* if it involves three incompatible activities. First, subversive or political activities. This activity is considered abuse because it is not in accordance with diplomatic functions which are prohibited from interfering in the internal affairs of the receiving country and may violate the sovereignty of the receiving country.

Second, *persona non grata* can be declared if the diplomatic representative violates the laws and regulations of the receiving country. There are limitations set by the Vienna Convention regarding violations of laws and regulations, this is done to prevent arbitrary behaviour of diplomatic representatives who are protected

by the right of immunity and privileges.

Third, espionage activities. Activities that can be categorized as espionage are when diplomatic representatives carry out activities that can disrupt the stability and national security of the receiving country. After the persona non grata is declared, the diplomatic representative will leave the receiving country.

Then, the abuse of immunity rights and privileges carried out by diplomatic representatives in the receiving country can also be responded to by removing the immunity and privileges they have^{xxii}. After the rights of the immunities and privileges are removed, the diplomatic representatives who commit abuses can be tried in the receiving country.

Lastly, severing diplomatic relations between the two countries^{xxiii}. This method is a last resort if the two methods above do not provide appropriate and fair results for both countries.

In the case of “Gold Smuggling Conducted by the Diplomatic Representative of North Korea for Bangladesh” which has been described in sub-point C, the legal consequence given by Bangladesh as the receiving country is to declare persona non grata against the diplomatic representative of North Korea, Son Young Nam. Meanwhile, North Korea's action as a sending country is to satisfy Bangladesh. North Korea has officially apologized for the actions of its diplomatic representatives who abused diplomatic immunity and privileges. In addition, the 27

kg gold smuggled by Son Young Nam will belong to Bangladesh as a form of responsibility and compensation from the sending country, namely North Korea.

I. Conclusion

One way for countries to establish cooperation is by exchanging diplomatic missions. The exchange of diplomatic missions indicates that the two countries are conducting diplomatic relations. Diplomatic relations are understood as a relationship established by the two countries with the aim of fulfilling various aspects of the national interests of each country. After agreeing, the two countries will send each other diplomatic representatives from each country.

In carrying out his duties, a diplomatic representative is granted a right of immunity and privileges to ensure the smooth running of his diplomatic mission. Such as personal immunity, jurisdictional, diplomatic family members, and immunity on-premises and residence of diplomats. In addition, they also get privileges such as being free from taxes, customs, and baggage, free from social security obligations, personal, public, and military services. However, in practice, there often abuses of the rights that have been granted. If abuse occurs, there are three ways that can be chosen to respond to the abuse, namely declaring persona non grata, removing immunity and privileges, or severing diplomatic relations between the two countries as a last resort.

One example of the abuse of the immunities and privileges that has occurred is the case of gold smuggling by Son Young Nam, secretary I of North Korea's diplomatic representative in Bangladesh. He refused Bangladesh airport officials who wanted to check his bag on the grounds of a red passport or diplomatic immunity and privileges that protect his diplomatic bag. So that no one can check the contents of the bag. After about 4 hours of arguing, Son Young Nam finally gave up and was caught smuggling 27 kg of gold in his diplomatic bag.

Son Young Nam was proven guilty of violating Bangladesh's national law, namely carrying jewellery that exceeds a maximum capacity of 2 kg and violating the provisions on the use of diplomatic bags that are not used for diplomatic purposes but for personal interests. However, the immunities and privileges that are still inherent in him make Son Young Nam unable to be prosecuted or tried in Bangladesh. As a result of the law, Son Young Nam was declared *persona non grata* and returned to his home country a week after the gold smuggling case occurred.

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