DIPLOMATIC IMMUNITIES FROM THE PERSPECTIVE OF CRIMINAL, CIVIL, AND ADMINISTRATIVE JURISDICTIONS OF THE RECEIVING STATE

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Abstract

A diplomatic mission is the representative of the sending state in the receiving state to carry out a sacred mission. For supporting the functions, diplomatic missions and diplomatic agents are given privileges and immunities rights. The privileges and immunities rights are not for individual diplomatic agents, but more importantly for the benefit of the mission as a whole. The consequence of having the privileges and immunities rights is the diplomatic missions and diplomatic agents are excluded from the local jurisdiction of the receiving state in the areas of criminal, civil and administrative law. This consequence creates complexity for the receiving country to follow up on diplomatic officials and their families if there is a violation or abuse of diplomatic immunity and privileges. There are some exceptions in world history where diplomatic officials can be followed up by recipient countries which can set a precedent for diplomatic immunity and privileges.

Keywords: Privileges and immunities rights; local jurisdiction; abuse.

Abstrak

Misi diplomatik adalah misi resmi negara pengirim di negara penerima yang mengemban misi suci. Guna menunjang kelancaran tugas misi diplomatik maka misi diplomatik dan pejabat diplomatik diberikan hak-hak kekebalan dan keistimewaan. Hak-hak kekebalan dan keistimewaan itu bukan semata-mata untuk diri pejabat diplomatik maupun anggota keluarganya, tetapi yang lebih penting adalah untuk kepentingan misi secara keseluruhan. Konsekuensi dari dimilikinya hak-hak kekebalan dan keistimewaan tersebut adalah misi diplomatik dan pejabat diplomatik beserta anggota keluarganya dikecualikan dari yurisdiksi lokal negara penerima baik di area hukum pidana, perdata maupun acara. Konsekuensi ini mengakibatkan kompleksitas bagi negara penerima untuk menindak lanjuti pejabat diplomatik beserta keluarganya bila terjadi suatu pelanggaran maupun penyalahgunaan kekebalan dan keistimewaan diplomatik tersebut. Terdapat beberapa pengecualian terjadinya dalam sejarah dunia dimana pejabat diplomatik dapat ditindak lanjuti oleh negara penerima yang dapat menjadi preseden terkait kekebalan dan keistimewaan diplomatik.

Kata Kunci: Hak kekebalan dan keistimewaan; yurisdiksi lokal; penyalahgunaan

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I. Introduction

International relations have grown rapidly since the Treaty of Westphalia signed in 1648. The international treaty intended to end the thirty-year war and acknowledged as a milestone for modern international law and the emergence of a modern state in Europe. In the modern era, the relationship between countries as the subject of international law is very dynamic. The relationship between countries is usually marked by the making of diplomatic relations.

Before the 1961 Vienna Convention on Diplomatic Relations was established, an Ambassadors sent by a Sending State to the Receiving State had been deemed to have a special sacred nature. For handling the duties, the diplomatic mission is granted privileges and immunities rights. In ancient Greece, when there was a disturbance to an Ambassador was considered the most serious offense. So in Roman times, if an injury aimed at a representative of State was essentially a deliberate violation of ius gentium. Therefore the representation of the State considered sacred (sancti habentur legati).

In order to support the duties of diplomatic missions, the diplomatic agents were given privileges and immunity rights. The principle of providing such special immunities and privileges has been made by States based on a reciprocal basis, and it is necessary to ensure that diplomatic missions can carry out their duties freely and securely. The privileges and immunities began to be widely practiced along with the permanent missions or Ambassadors exchanges in the 16th and 17th centuries in Europe. International jurists accept it, even if an Ambassador has been involved in a betrayal against the sovereignty of the receiving State. An Ambassador may be expelled, but cannot be arrested or prosecuted. In the 17th century, many countries began to provide immunity from criminal jurisdiction in receiving States and became a practice of international customs.

In the mid-18th century, the rules of customary international law on diplomatic privileges and immunities had begun to be established, including the property, buildings and communications of diplomats. In addition, diplomatic missions will also be exempt from taxation in the receiving States. Diplomatic

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5 Ibid, p. 4.
7 Ibid.
missions also enjoy the immunity of archives and documents as well as freedom of communication.

In practice, according to Sumaryo Suryokusumo, the granting of privileges and immunities rights is more based on the principle of reciprocity between States without considering their different political system and social system. The provision of privileges and immunities are not only for the individuals of diplomatic agent but also to ensure the implementation of the duties of diplomatic missions efficiently.\textsuperscript{8}

The granting of privileges and immunities rights was enjoyed not only for the head of mission and diplomatic staff, but also for the families who lived with them. The 1961 Vienna Convention on Diplomatic Relations also affirmed that privileges and immunities may in some cases be accorded to administrative and technical staff and service members, including to a private servant.

Sometimes, the granting of immunities and privileges are misused or abused by diplomatic missions or diplomatic agents and become a disturbance of relationships between the sending States and the receiving States. Mc Clanahan has pointed out that abuse of immunity and diplomatic privileges has risen rapidly in the last 20 years, in particular against the abuse of diplomatic bag for smuggling and so on, escalating espionage and acts to support terrorism.\textsuperscript{9} The espionage actions has increased very sharply during the cold war that occurred between the West Block and East Block. The phenomenon of expelling diplomatic agents between the two blocks countries is very frequent. Another serious action for the abuse of diplomatic immunity is the drug trafficking practices perpetrated by diplomatic agents. Usually the diplomatic agent if caught would argue that the act was entirely perpetrated by himself or together with other individual diplomatic agents assisted by a network of drug smugglers who had bribed them to become drug dealers.\textsuperscript{10}

Based on the phenomenon in the introduction chapter, the legal issue in this paper is: Could the receiving States enforce the jurisdiction over the diplomatic agents or members of his family who committed violations of criminal law or civil law in the receiving State?

\textsuperscript{8} Ibid, p.102.

\textsuperscript{9} Sumaryo Suryokusumo, \textit{op.cit.}, p. 103-104.

\textsuperscript{10} Sumaryo Suryokusumo, \textit{op.cit.}, p. 69-70.
II. Analysis and Discussion

In Article 3 Paragraphs 1 of the 1961 Vienna Convention on Diplomatic Relations and Optional Protocols stated:

The functions of diplomatic mission, consist inter alia in:
1. Representing the sending State in the receiving State;
2. Protecting in the receiving State of interest of the sending State and of it nationals, within limits permitted by international law;
3. Negotiating with the Government of the receiving State;
4. Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State
5. Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

Furthermore, in Article 3 Paragraph 2 mentioned that:

Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission. The Article 3 of the 1961 Vienna Convention on Diplomatic Relations showed that the position of diplomatic missions have to carry out a heavy duty, especially representing and protecting the interests of the sending State in the receiving State, including carrying out consular functions.

The privileges and immunities rights granted to diplomatic agents and members of their families are essentially to support their duties in order to proceed efficiently. However, it does not mean that diplomatic agents can freely commit violations of the laws or regulations in the receiving State. In the diplomatic relations, the existing privileges and immunities as set out in the 1961 Vienna Convention on Diplomatic Relations can be grouped into three categories: Firstly, such immunities of diplomats residence and property as set forth in Articles 29, 30 and 41, as well as their immunities from jurisdiction of criminal, civil and administration as provided in Article 31. Secondly, the privileges granted to diplomats are the exemption of their obligation to pay taxes, customs, social security and individuals provided for in Articles 33, 34, 35 and 36. Thirdly, the privileges and immunities granted to diplomatic missions not only involve the buildings (premises) including the archives and documents, freedom of communication, but also the exemption from any taxation of the receiving State as provided in Articles 22, 23, 24, 26 and 27.
Referring to the status of diplomatic agents as the representative of the sending State to the receiving State, the consequences of it are the diplomatic agents considered sacred (sancti habentur legati). Sumaryo Suryokusumo\(^{11}\) said that both ambassadors and diplomatic staff members are inviolable and they shall not be liable to any form of arrest and detention. The receiving State shall treat them "with due respect" and shall "take all appropriate steps" to prevent any attack on his person, freedom and dignity. Masyhur Effendi said: “The personal inviolability of diplomatic agents is the basis of all the privileges and immunities of diplomats. These are absolute, the diplomatic offices as the center of diplomatic activity”.\(^{12}\)

The Article 41 paragraph (1) of the 1961 Vienna Convention on Diplomatic Relations states: Without prejudice to their privileges and immunities, it is the duty of all persons enjoying the privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that state. This means that based on the provisions of Article 41 paragraph (1) diplomatic agents and members of their families enjoy such privileges and immunities to respect the law and regulations in the receiving State. They also have a duty not to interfere in the internal affairs of the receiving State. Furthermore, in Article 41 paragraph (3) of the Vienna Convention of 1961 on Diplomatic Relations is also affirmed: The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the convention. The existence of Article 41 of the Vienna Convention 1961 should be a "sign" to be obeyed by diplomatic agents as well as members of their families and diplomatic missions in general, but in reality the abuse of privileges and immunities of diplomacy often happen.

**A. Immunity From Criminal Law Jurisdiction**

Although Article 41 of the 1961 Vienna Convention explicitly states on the prohibition of abuse of privileges and immunity rights of diplomatic, but in fact the abuse of privileges and immunity rights occur in a criminal action. Regarding this phenomenon, Satow\(^{13}\) asserted: “If a diplomatic agent commits a crime in the receiving State to which he is accredited, he can not be tried or punished by the local courts”. Malcolm N. Shaw\(^{14}\) stated that “the diplomatic agent is immune under

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\(^{11}\) *Ibid*, p.104.


Article 29 of the 1961 Vienna Convention and the diplomatic agents can not be arrested or detained. It is a basic provision in diplomatic law.

Furthermore in relation to the offenses committed by diplomatic agents, Shaw\textsuperscript{15} said: “As far as criminal jurisdiction is concerned, diplomatic agents enjoy complete immunity from the legal system of the receiving state. This provision noted in Article 31 (1) merely reflects the accepted position under customary law”. The same thing is expressed by Ian Brownlie\textsuperscript{16}: “Article 31 paragraph (1) of the Vienna Convention provides in simple terms and without qualification that ‘a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the Receiving State’. This has long been the position in the customary law”.

In spite of that, in the sixteenth and seventeenth centuries, some diplomatic jurists have affirmed that if an ambassador is involved in a criminal act of conspiracy against the receiving State, the government of the receiving State (for self-defense) can punish the Ambassador. But in reality, it was never implemented because there is no willingness from the receiving State. Satow\textsuperscript{17} gave an example case in England in 1571: “The Bishop of Ross, the representatives of Mary Queen of the Scrum Queen Elizabeth of England was held captive, was found to have participated in plots for the deposition of the Queen of England, 5 studied united an ambassador who incited insurrection against the ruler to whom he was accredited for his privileges and could be tried. But even in this case, where the status of the sending monarch was so doubtful, Elizabeth did no more than imprison Ross for a short time and then expel him”.

In other case occurred in France in 1718: “Prince de Cellamare, Spanish Ambassadors in Paris, conspired to deprive the Duc d'Orleans of the Regency and transfer it to his master, the King of Spain. The conspiracy was discovered, and Cellamare was placed under arrest. The resident diplomatic body declined to take up the case. French Ambassador managed to reach the frontier safely. Cellamare was thereafter performed to the Spanish frontier and expelled from France”.\textsuperscript{18}

Both cases show that the receiving State does not seriously want to detain diplomatic agents who have violated the national law of the receiving State including conspiracy action against the receiving State's government. In other similar cases which also involve an Ambassador as recorded by Satow, generally only lead to expelled action by the receiving State and now better known as the

\textsuperscript{15} Ibid, p. 473.
\textsuperscript{17} Lord Gore Booth (ed), \textit{loc.cit}.
\textsuperscript{18} Ibid.
declaration of persona non grata.\textsuperscript{19} Declarations of persona non grata may be imposed on an Ambassador, including members of diplomatic staff, especially to those already in the receiving State.

Article 9 of the 1961 Vienna Convention on Diplomatic Relations affirms that the declaration of persona non grata to diplomatic agents may be made at any time by the receiving State without explaining the reason for it to the sending State. According to Sumaryo Suryokusumo\textsuperscript{20}, there are three activities are considered to make declaration of persona non grata:

Firstly, the activities of foreign diplomats deemed to be political or subversive not only harm the national interest but also violate the sovereignty of a receiving State. Secondly, the activities undertaken clearly violate the laws and regulations of the receiving State. Third, activities that may be classified as espionage activities may be deemed to interfere with both the stability and national security of the receiving State.

Regarding to persona non grata, Boer Mauna\textsuperscript{21} affirmed that the statement of persona non grata is issued by the receiving State if the presence of a diplomat can no longer be tolerated as a result of his unacceptable attitude or conduct. The declaration of persona non grata to diplomats proven to engage in espionage by protecting foreign secret agents and allowing them to engage in activities in diplomatic premises, protecting persons subject to punishment, interfering in the domestic affairs of the receiving States, smuggling or making statements harmful to the receiving State. In the modern era of diplomatic relations, the abuse of diplomatic immunities by diplomatic agents are increasing. In general, the abuse of diplomatic immunities are smuggling and trafficking of illicit drugs including narcotic or heroin, and firearms. Mc Clanahan\textsuperscript{22} noted that in March 1987, there had been an abuse of immunity rights by the driver of the Norwegian Ambassador to the United Nations. He was detained with two others when accused of smuggling large scale cocaine into the Norway Embassy at Lincoln Continental New York. They were arrested for trafficking drugs by an undercover Federal Agent.

Furthermore, Mc Clanahan\textsuperscript{23} said that if a diplomatic agent is involved in drug-smuggling and he claims to have immunity, usually the State Ministry of

\textsuperscript{19} Ibid.
\textsuperscript{20} Sumaryo Suryokusumo, \textit{op.cit.}, p.121-122
\textsuperscript{22} Mc Clanahan., \textit{op.cit.}, p.156-157
\textsuperscript{23} Ibid.
Foreign Affairs of the receiving State will ask the sending State to waive the immunities rights held by the diplomatic agents. Although the sending State has waived the diplomatic agents immunities rights, in practice the dating of immunity took place after a certain time until the diplomatic agents left the receiving State. Normally, the receiving State will put the diplomatic agent on the list of persons who may not re-enter the territory of the receiving State.

On the contrary, the sending State will prosecute his diplomatic agent who has committed crimes in the receiving State and ends his diplomatic career. The President of Zambia Kenneth Kaunda is one good example of the government of the sending State which has taken appropriate action regarding the abuse of diplomatic immunities by its diplomatic agents. The case occurred on February 24, 1985, London police arrested a man who had two kilograms of heroin. When the investigation was conducted in the suspect's house based on the object and confession by the III Secretary of the Zambian Embassy in London, suddenly he claimed his immunity and ordered the police to leave his residence.

When the police checked the person's identity it turned out that what he said was true, the police immediately stopped the investigation and left the residence of the diplomatic agent. The next day after the police action, the Zambian Embassy sent a protest against the incident. The protest was responded by the British Foreign Ministry by apologizing. The London police reasoned that it was suspected there was strong evidence that there had been abuse of diplomatic bags to smuggle heroin. The British Foreign Office then approached the Zambian Ambassador and requested that the III Secretary of the Embassy waive his immunity.

The ambassador of Zambia refused to waive the immunities of his III Secretary, but later consulted President Kenneth Kaunda, who quickly responded and ordered to waive the diplomatic immunity of III Secretary's and immediately arrested.

President Kenneth Kaunda's decision was made in a letter and sent to public: “Diplomatic immunity was never intended to prevent the investigation of serious crimes. I have a horror of all addictive drugs. It destroys human beings … I feel I am acting to protect my people and also the people of Britain and indeed of the whole world. When the request for the waiver of immunity reached me, I did not hesitate for a second. It was, I am told, an almost unprecedented action. But in
this fight we all must wage against terrifying menace, I am convinced that I am right.”

Mc Clanahan\(^{25}\) made a special note that the actions of President Kenneth Kaunda are expected to be a precedent that will be followed in the future, especially in case of diplomatic immunity abuses. In Article 27 paragraph (3) of the 1961 Vienna Convention stated that the diplomatic bags can not be opened or detained by the receiving State authorities, but that does not mean it can be misused. The limitation on the use of diplomatic bags has been affirmed in Article 27 paragraph (4) of the 1961 Vienna Convention which stated: The packages constituting the diplomatic bag must be visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

Thus it is clear that the diplomatic bag should only be used for matters related to missionary interests. Sumaryo Suryokusumo\(^{26}\) furthermore explain that the diplomatic bag is only used for the delivery of important documents from the sending State including other goods for official purposes such as stamps, flags, passports, books on legislation and others which can be classified only for official purposes. However, with reference to the provisions of Article 36 paragraph (2) of the 1961 Vienna Convention on Diplomatic Relations, in Kennedy International Airport, all luggage or baggage is routinely to be sniffed by trained dogs to check whether there are narcotics or others.

Although the goods of a diplomatic agent usually will not be opened, but if the trained dog sniffs out any narcotics or others, then the diplomatic agent will be asked to open a luggage suspected of having a narcotic or others. In the event of a non-strict violation of law by a foreign diplomatic agent, the Government of the receiving State will protest to the ambassador of the sending State and occasionally he shall be summoned to the Ministry of Foreign Affairs to obtain the Diplomatic Note containing the protest.

Other forms of abuse of privileges and immunities have also been allegedly committed by the Libyan Embassy in London which exports and imports firearms. In Britain, if a person has a gun without the permission of the police it is illegal, including if it is done by a diplomatic agent. Illegal possession of firearms was also carried out by diplomats from Vietnam and from Cuba in 1988. The serious incident resulted in the expulsion of the two diplomats after the

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\(^{24}\) Ibid., p.157.
\(^{25}\) Ibid.
\(^{26}\) Sumaryo Suryokusumo, loc.cit.
Ambassadors of both sending States refused to waive the diplomatic immunity of the diplomat.

Therefore Parliamentarians in Britain suggested using electronic sensors of diplomatic bags to eliminate abuses of immunity, although Sir John Freeland, the British Foreign Ministry's legal adviser, reminded that it was in contravention of the provisions of Article 27 of the 1961 Convention Vienna. 27 In Indonesia, a case of diplomatic privileges and immunity abuse also occurred, as did by two of the United States of America diplomatic staff in Jakarta involved in the trafficking of drugs. The case that occurred on February 7, 1994 was started from the arrest of two US Embassy staff members named Steven Yoseph Bryner and Peter M. Karajin in a hotel in Jakarta for involvement in the trafficking of drugs of 160 ecstasy. During the investigation at Steven J Bryner's residence, 5306 of ecstasy were found, 1948 of yellow, 120 of white and 8 pieces of purple, estimated to be worth Rupiah 159 million or equivalent to US $ 75,000.

The United States Embassy sent an official note to the Ministry of Foreign Affairs of the Republic of Indonesia protesting the arrest of two embassy staff and requested the Government of Indonesia to release them under Articles 29, 31 and 37 of the 1961 Vienna Convention. The Embassy of the United States of America also requested to take over the two men and be prosecuted in US military courts and to ensure that both persons as members of military personnel will be returned to their Headquarters where investigations and prosecutions will be conducted according to US laws. Bryner and Karajin were dispatched to Guam by the US military. Two men were tried in Guam Military Court in early May 1994, and had sentenced them 7 years imprisonment and social services. 28

Another form of violation of law by diplomatic agents in the receiving State is a violation of traffic regulations. In 1996, the French Government asked the Zaire Government to waive the immunity of its Ambassador in Paris for a traffic accident that killed two boys in southern France. The Ambassador was found to be drunk while driving. The emotions of the local community were so high and for respecting the France Government, the Zaire Government waived his diplomatic immunity to be sentenced by the French Court. 29

In the case of Gueorgui Makharadze, senior diplomat, second rank at the Embassy of the Republic of Georgia in Washington, on January 3, 1997, drive a

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28 Sumaryo Suryokusumo, op.cit., p. 131-132.
29 Boer Maura, op.cit., p. 552-553.
car at high speed and crashed into another car, killing a 10-year-old girl and wounding four others. On the incident, the reaction of the local community is very angry, especially after it was discovered that the diplomat was drunk and driving his car at a very high speed in the downtown of the city. The Georgian government intended to recall the diplomat on the basis of immunity rights possessed by diplomatic agents, but after US Secretary of State Warren Christopher called on Georgian President Shevardnadze to waive diplomatic immunity, the Georgian government finally waived the diplomatic immunities.

The waiver of this immunity is done by president Shevardnadze on the basis of good relations between the two countries. In the end, Mr. Gueorgui Makharadze was tried and sentenced to 10 to 21 years in prison by the District of Columbia Superior Court. On the contrary, the United States of America, which has been a party to the 1961 Vienna Convention on Diplomatic Relations by ratification since 1972 has never waived diplomatic immunity on the basis that many legal systems in other countries do not reflect US judicial standards. It was done in the case of his diplomat who crashed and killed a man in Moscow in 1993, but the US refused to waive his immunity and were simply called home.

B. Immunity From Civil Law Jurisdiction

The privileges and immunities from the civil jurisdiction of the receiving State developed shortly after the immunity from the jurisdiction of criminal law. Immunity from the civil law jurisdiction even faced many challenges in European countries in the seventeenth century. The demands of the lifestyles and self-performances of the ambassadors are not supported by funding from the sending State. Therefore many Ambassadors or diplomatic agents are involved in trade to finance their performance. These actions cause incidents and encourage the emergence of regulations about them. In 1679 a Decree of the State-General of the Netherlands was issued, and starting with the statement: “Be it known: that every day many troubles and difficulties are caused because the Burghers of this State continue to have the Persons, servants or goods of Foreign Ambassadors or Ministers coming to this country residing there or passing through it, arrested and detained…”

In 1708, the Diplomatic Privilege Acts were issued by the UK Government and in the preamble section also asserted almost the same things as in the Netherlands, especially regarding the detention of diplomatic agents even for a few

30 Ibid.
31 Ibid.
32 Lord Gore Booth (ed)., op.cit., p.125.
hours. In the modern era, the immunity issue of the jurisdiction of civil law of the receiving State for diplomatic agents has been set out in the provisions of Article 31 the 1961 Vienna Convention. Referring to this article, Satow gives special note to three exceptions which are not recognized in common law countries, but they have developed in civil law countries.

The three exceptions are:33 Firstly: A real action relating to private immovable property situated in the territory of the receiving State, unless he holds on behalf of the sending State for the purposes of the mission. Satow emphasizes the meaning of real action according to the civil law that it means a real action regarding the ownership of immovable property. Although in the Vienna Conference, the sentence unless he holds it on behalf of the sending State for the purposes of the mission is not particularly clear when it is associated with ownership of goods placed on the embassy premises or placed at the private residence of diplomatic agents. Nevertheless, the exemption of immunity can result in legal action against any action relating to ownership of the property that is not subject to the laws of the sending State, and of course it will lead to legal issues concerning the status of ownership of the private residence of diplomatic agents.

Secondly: An action relating to succession in which the diplomatic agents is involved as executor, administrator, heir and legatee as private person and not on behalf of the sending State. Diplomatic agents in the capacity of their duties to perform the functions of the Consular may transfer the right of ownership since the death of a citizen in the territory of the receiving State and to leave money for another person in his origin country. Diplomatic agents may take care of “handling” their rights, and/or act on behalf of the sending State government to request a tax on ownership transfer. The immunities rights from civil jurisdiction by itself applies in this event, even though the diplomatic agents take an act of transition of individual property which is not really part of its function.

Third: An action relating to any professional or commercial activity exercised by a diplomatic agent in the receiving State outside his official function. The provisions of the third exemption are further emphasized in the provisions of Article 42 of the 1961 Vienna Convention: A diplomatic agent shall not in the receiving State practice for personal profit any professional or commercial activity. Referring to this article, Satow34 said a diplomat may disagree with the prohibition of professional or commercial activities. The sending State and the receiving State may be able to agree to waive this obstacle. In England, as much as possible to

33 Ibid. p.125-126.
34 Ibid. p.126-127.
avoid the appointment of a diplomat associated with business. However, it is very
difficult to ban the family members of diplomatic agents such as wife and children
who continue to perform professional activities or are employed in the receiving State.

C. Immunity from Jurisdiction of Administrative Law

A diplomatic agent is also immune from any executions that will be done
against him. Although the sending State waived the diplomatic immunity rights, if
the waiver is without the separation, it is impossible to execute the court
judgement. Thus the above three exceptions apply to execution as well. If there is
a lawsuit against the personal business activity of a diplomat and there is a
judgment court that defeats the diplomatic agent, the execution of the verdict
cannot apply to himself or his personal residence. The shares belonging to the
diplomat may be confiscated, but his house remains inaccessible by receiving
State. A bankruptcy lawsuit against a diplomat agent is also impossible because
he/she has immunity rights.

If a diplomat dies at the embassy premises or not, there should be an
examination process from a competent physician or coroner, but in its development
a diplomatic mission may override that procedure. The examination can be done
as should be in the case of the assassination of the British Embassy's butler in
Madrid-Spain in 1921. The Ambassador continued to allow the inspection process
on the embassy premises by the receiving State authorities and the ambassador
and several servants also testified in the process of investigation. The provisions
of Article 31 Paragraph (2) of the Vienna Convention 1961 concerning Diplomatic
Relations stipulates that a diplomatic agent is not obliged to give testimony as a
witness.

There is an example case in the United States. In 1856 the Netherlands
Minister at Washington was requested by the Secretary of States to appear in the
court to provide evidence of a homicide committed in its presence. By the
unanimous advice of his colleagues he refused. Representations were made to the
Netherlands Government by that of the United States, which admits that in the
United States, the Minister has the right of refusal, appealing to the general sense
of justice of the Netherlands Government. The latter, however, declined to give the
desired instructions, but authorized the Minister to give his evidence in writing, and
he accordingly offered to do so, adding that he could not submit to cross

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36 Ibid.
examination. The offer was declined, as the district Attorney General reported that not to be receivable as evidence.

Referring to the refusal, the United States Government finally issued a declaration of persona non grata for the Minister of the Dutch Embassy in Washington D.C. The United States 'action, of course, led to a lack of clarity on the status of diplomatic agents who have the immunity not to give testimony before a court. However, with the adoption of the 1961 Vienna Convention on Diplomatic Relations, it further reinforces that the actions taken by the Netherland's diplomats are true. Referring to the provision of Article 31 paragraph (2) it becomes clear that diplomatic agents are not only immune to testify before the court but also from any legal obligations in the receiving State. Thus, the receiving State shall not be entitled to make a rejection reason for giving testimony as the basis for the declaration of persona non grata.

It is clear in the 1961 Vienna Convention on Diplomatic Relations the diplomatic immunities from the local jurisdiction of the receiving State concerned with criminal, civil and administrative law. In general, if there is a violation of the law of the receiving State whether involving a criminal or civil case, as long as the sending State government has not waived the immunities rights of its diplomatic agents, the receiving State's government can not do anything other than to declare a diplomatic agent as a persona non grata.

The waiver of Immunities by the sending State to diplomatic agents shall be clearly stated and based on Article 32 of the Vienna Convention 1961:

1. The immunity from jurisdiction of diplomatic agents or persons enjoying immunity under Article 37 may be waived by the sending State
2. Waiver must always be expressed.

Boer Mauna\textsuperscript{37} notes that in the past few years after the 1990s the demand for waiving immunity against the diplomatic agents has been heightened by the frequent misuse of diplomatic immunity. The demands for waiving diplomatic immunity concerning criminal actions, smuggling, traffic law disobedience or driving a car in alcohol influence and crashing the people. Thus the principle of absolute immunity for the diplomatic agents has begun to be waived and the waiver of the immunity also depends on the close relationship between the State.

\textsuperscript{37} Boer Mauna, \textit{loc. cit.}
III. Conclusion

Based on the analysis as explained before, the conclusions can be drawn:

1. In general, as the consequence of privileges and immunities rights belonging to the diplomatic missions and diplomatic agents, they should be excluded from the local jurisdiction of the receiving state. But if a diplomatic agent violates and disobedience of domestic law of the receiving state, the law enforcement to a diplomatic agent or member of his family who commits a violation of criminal law or civil law in the receiving State depends on the type of violation of its law. If the violation is felt light, usually the receiving State (by the Ministry of Foreign Affairs) will protest to the Ambassador of the sending State or by giving the Diplomatic Note. Whereas the violation is considered to be grave, the receiving State will request to the sending State to waive the immunities rights possessed by the diplomatic agent or any member of his family who committed the crime. If the request for waiving the immunity is approved by the sending State it will be processed according to the jurisdiction of the receiving State.

2. The 1961 Vienna Convention on Diplomatic Relations does not expressly set legal sanctions which may be granted to diplomatic agents or members of their families in violation of the law of the receiving State. If there is no waiver of diplomatic immunity from the sending State, the receiving State can not act to enforce the national law to the diplomat or his family who committed a crime. The receiving State only can issue a declaration of persona non grata or carry out the expulsion of a diplomatic agent or a member of his or her family. The legal proceedings shall be submitted to the jurisdiction of the sending State.
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Thesis:

Paper or Speech Presented in A Scientific Forum: