Responsibility Of The Receiving State In Protecting The Diplomatic Premises (Case Of The Lowering Of The Iranian Embassy Flag In London) Mela Yunita, Lily Husny Putri

# RESPONSIBILITY OF THE RECEIVING STATE IN PROTECTING THE DIPLOMATIC PREMISES

(Case Of The Lowering Of The Iranian Embassy Flag In London)

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#### **ABSTRACT**

The responsibility of the receiving state in protecting the diplomatic premises has been regulated in the 1961 Vienna Convention on Diplomatic Relations. However, disturbances and destruction of diplomatic premises are still common in practice. One of them is the case of infiltration carried out by followers of al Shirazi against the Iranian embassy premise in London on Friday, March 9, 2018. The this paper indicates that the protection provided by the receiving state to the diplomatic representative premises in its country should not exceed the threat capacity or be less than the threat. In the case of lowering the flag of the Iranian embassy in London, this is a form of responsibility given by Britain as the recipient state, namely by arresting the intruders after the incident. However, the actions of the intruders constituted a violation of the 1961 Vienna Convention.

**Keywords:** Disruption of the Diplomatic Premise, Vienna Convention 1961, Receiving States, London.

### INTRODUCTION

International law is a law that regulates the immunities and privileges of diplomatic or international entities. It is stated in the 1961 Vienna Convention, which discusses Diplomatic Relations. This relationship can be realized through the exchange of diplomatic missions. Based on Article 22 of the Vienna Convention, there are 2 (two) aspects related to the inviolability of the diplomatic representative building. The aspect is the one that has to do with the obligation of the receiving state to provide full protection as a foreign representative in its own country from any interference. This also applies to extraordinary circumstances cases such as armed conflicts that have taken place between the sending and

receiving states; then the receiving state will be obliged to protect the representative building along with the property of the diplomatic representative and its archives. Apart from this, there is also an aspect that completely regulates the position of foreign representatives who have been declared immune from inspection, including their belongings and all the files contained therein. Therefore, the receiving state is very obliged to be able to protect the diplomatic representative building in its country from all threats that may occur.<sup>1</sup>

However, in practice, the destruction and disturbance of the diplomatic mission building often occur. The case recently occurred was the intrusion of the Iranian embassy in the UK. This intrusion occurred on Friday, March 9, 2018 at around 16.30 local time. A group of people entered the Iranian embassy in London by climbing a balcony taking down the Iranian flag and replacing it with the flag of al Shirazi followers. This action was carried out by four people, the supporters of Ayatollah Hossein al-Shirazi.<sup>2</sup>

When the intrusion occurred, no one was injured, and the perpetrators of the intruder were arrested. Police have arrived at the scene, but there has been no attempt to force the intruder to descend. Three hours later, the intruders descended voluntarily. According to Mohammad Bagher Nobakht, a spokesman for the Iranian government, the slow action taken by London police in arresting the perpetrators in the hours after the incident was a failure to comply with international law.<sup>3</sup>

<sup>&</sup>lt;sup>1</sup> Syahmin AK, *Hukum Diplomatik (Dalam Kerangka Studi Analisis)*, Jakarta: Rajawali Pers, 2008, hlm. 137

<sup>&</sup>lt;sup>2</sup> Reuters, "Four arrested after balcony protest at Iranian embassy in London", <a href="https://www.reuters.com/article/us-britain-iran/four-arrested-after-balcony-prot">https://www.reuters.com/article/us-britain-iran/four-arrested-after-balcony-prot</a> est- at-iranian-embassy-in-london-idUSKCN1GL2TS> [diakses 05/07/2018].

<sup>&</sup>lt;sup>3</sup> Berlianto, "Insiden Penurunan Bendera di Kedutaan London, Iran Panggil Dubes Inggris",<a href="https://international.sindonews.com/read/1288702/43/insidenpenurunanbenderadikeduta">https://international.sindonews.com/read/1288702/43/insidenpenurunanbenderadikeduta</a> an-london-iran-panggil-dubes-inggris-1520744239>[diakses 08/05/2018].

On March 10, 2018, Iran's Ministry of Foreign Affairs condemned the intrusion of the Iranian Embassy in London. Bahram Qasemi, the spokesman for Iran's Foreign Ministry has said that Iran expressed its strong protest against the British ambassador in Tehran; they then demanded the British police to be able to protect its diplomats in London.<sup>4</sup>

Based on the description of the case above, the act of infiltrating and lowering the flag of the Iranian embassy building in London has violated Article 22 of the 1961 Vienna Convention, which states that the embassy building should be free from all threats or disturbances that can damage the peace or dignity of the sending state. So this research is considered important to be investigated in a thesis titled "Responsibility of The Receiving State in Protecting The Diplomatic Premises (Case of The Lowering of The Iranian Embassy Flag in London)".

# **METHODS**

This research is also known as normative juridical research, which focuses on studying the implementation of norms contained in positive law. The things studied in the research of a normative law include legal materials whose contents are normative rules. The legal materials consist of primary legal materials, statutory regulations, jurisprudence, conventions or treaties, and international agreements; then there are secondary legal materials which are materials that provide detailed explanations of primary legal materials; and the last is tertiary legal materials, materials that provide instructions as a form of explanation or complement to primary and secondary legal materials.<sup>5</sup>

## RESULTS AND DISCUSSION

<sup>5</sup> *Ibid*, hlm. 86.

<sup>&</sup>lt;sup>4</sup> Dwi Murdaningsih, "Orang tak Dikenal Serang Kedubes Iran di London" Republika, edisi 11 Maret 2018, <a href="http://internasional.republika.co.id/">http://internasional.republika.co.id/</a> berita/internasional/ eropa /18/ 03/11/p5ejkq368-orang-tak-dikenal-serang-kedubes-iran-di-london>, [diakses 05/04/2018].

# 1. Responsibilities of the UK as a Recipient State Regarding the Protection It Can Give to the Iranian Embassy Building in London

Since ancient times, states have universally recognized and practiced the protection of diplomatic missions. This has been explicitly regulated in the 1961 Vienna Convention on Diplomatic Relations. However, disturbances and destruction of diplomatic missions are still common.

The case regarding the disturbance to the diplomatic representative building that recently occurred was between Iran and Britain. Although these two countries need each other in the political and economic fields, attacks on each other's diplomatic representative buildings often occur. The attack incident this time was the victim of the Iranian embassy building in London. On Friday March 9 2018, a group of four people climbed the balcony of the Iranian embassy building and replaced the Iranian flag with the flag of the followers of al-Shrazi.

In the case of the intrusion of the Iranian diplomatic mission in London, the actions of the intruders contradicted Article 22 Paragraph 1 of the 1961 Vienna Convention, which states that the mission building is inviolable. Officials from the receiving country are not allowed to enter the building unless approved by the head of the mission.

Based on the article above, it is clear that officials from the receiving state and foreign parties cannot enter the embassy building of a country without obtaining permission from the head of the diplomatic representative. But in this case, the intruders (foreign parties) have entered the premises of the Iranian embassy building and have even climbed its balcony without the permission of Iran's chief diplomatic representative, Hamid Baidi Nejad. The actions of the intruders are also against the *interna rationae*, meaning that the environment in the foreign representative building cannot be disturbed. Even local officials and state apparatus cannot enter it without asking permission from the diplomatic

representative from the Iranian embassy building, which should not be entered by foreign parties or even the receiving state's equipment.

Article 22, paragraph 2 of the 1961 Vienna Convention provides that the receiving State is under a special duty to take all appropriate steps in protecting the premises of the mission against disturbance or damage and to prevent disturbance of the peace of the mission or its degradation. So, in this case, Britain is required to carry out its positive obligation as a receiving state to protect Iran's diplomatic buildings. Positive obligation means that the receiving state is obliged to provide full protection to foreign representatives from any interference or threats, in other words ensuring that all foreign representatives are safe from threats.<sup>6</sup> If extraordinary circumstances have occurred, such as an armed conflict between the sending country and the receiving state; the receiving state is obliged to protect the representative building andthe property and archives belonging to foreign representatives in their country.

As in the history between Britain and Iran, these two countries have often experienced problems in their diplomatic relations, so they should have given special protection to diplomatic buildings in their respective countries. Franciszek Przetacznik called this a form of prevention from harmful occurrences to diplomatic officials in the receiving state. The Vienna Convention states that the receiving state must take all appropriate measures to prevent any attack on foreign officials, freedoms, or dignity. There is no clear definition of "appropriate measures". It is also not established who decides whether or not the appropriate action is taken. This must be determined in each concerning the circumstances. Foreign officials working in places where violent crimes are common or terrorist

<sup>&</sup>lt;sup>6</sup> Sulaiman, "Penegakan Hak-Hak Kekebalan dan Keistimewaan Terhadap Gedung Perwakilan Diplomatik oleh Negara Penerima" Jurnal Mimbar Hukum, Medan: Universitas Sumatera Utara (USU),2000, hlm. 81

<sup>&</sup>lt;sup>7</sup> Franciszek Przetacznik, "Protection of Officials of Foreign States according to International Law" Martinus Nijhoff Publishers, 1983, The Hague, the Netherlands, hlm.39

officials sent to quieter and

groups are active may need greater protection than officials sent to quieter and more peaceful cities.<sup>8</sup>

Quoting from Przetacznik's statement, the receiving state, namely the United Kingdom, must take all appropriate measures to prevent attacks on foreign officials against their freedom and dignity. British action, in this case, was to send its envoy, the British Police, to the scene three hours after the intruders climbed the balcony of the Iranian diplomatic mission. Given that these two countries often experience attacks on their diplomatic representative buildings by third parties, the UK should provide special protection to the Iranian diplomatic representative building in London.

Even though the British Police had arrived at the scene, they were not allowed to directly break into the Iranian diplomatic mission building. This action is contrary to the rules of the 1961 Vienna Convention Article 22 paragraph 1, which reads that the receiving state's equipment is prohibited from entering the foreign embassy building without the permission of the head of the diplomatic representative. Therefore, the British action in arriving at the scene and securing the environment of the Iranian embassy building is a form of Britain's responsibility as the receiving state in carrying out its duties as the protector of the Iranian diplomatic representative building.

## Przetacznik also said that:

"Receiving countries can choose how to achieve this outcome, thus the receiving State decides what steps are appropriate. If the receiving State fails to keep the personal inviolability of a foreign official free from infringement, the sending State can argue that the measures taken are ineffective. The receiving state in such cases is internationally liable for not fulfilling its obligations to protect foreign officials."

<sup>&</sup>lt;sup>8</sup> *Ibid.*, hlm. 50

<sup>&</sup>lt;sup>9</sup> Loc. Cit.

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As in this case, there has been an intrusion of the Iranian diplomatic representative building by a third party, namely the followers of al Shirazi, it can be concluded that the protection provided by Britain as the receiving state is considered ineffective. As is the history between the two countries, Britain should have further increased the protection given to the Iranian diplomatic representative building to avoid interference or threats to the diplomatic representative building. However, the action of the British Police in arresting the intruders is a form of responsibility that the UK has carried out as a receiving state.

At the time of the intrusion, Iran's ambassador to the UK, Hamid Baidi Nejad, and his staff were inside the embassy building. Meanwhile, the intruders protested outside the embassy building by climbing the balcony and replacing the Iranian flag with the flag of the followers of Al Shirazi. When the protest occurred, the intruders did not attack Hamid personally so they did not violate Article 29. However, the actions of those who entered the Iranian embassy building violated Article 22 of the 1961 Vienna Convention.

As the function of one of the duties of diplomatic representatives, namely protection which has been stated in Article 3 paragraph 1 sub b of the 1961 Vienna Convention, which states that the protection function of diplomatic representatives is to protect in the receiving state the interests of the sending country and its citizens, within the permitted limits. By international law. Therefore, it requires diplomats to be on standby to protect the interests of their citizens in the country they are accredited with. In this case, the diplomatic office is required to be active for twenty-four hours and free from all forms of infiltration, attack, or occupation. This is intended so that diplomats can immediately help their citizens who are facing problems in the receiving state,

such as providing Travel Letters Like Passports for citizens who have lost their passports to accompanying citizens who are facing legal problems.

The intruders did not force their way into the embassy building, but the actions of the intruders had disrupted ongoing activities at the embassy building. The staff and visitors still feel threatened by the presence of intruders on the balcony building. Although they did not force their way into and damage the embassy building, the actions of the intruders were still a violation of Article 22 of the 1961 Vienna Convention.

# 2. The Scope of Protection that Can Be Provided by the Recipient State in Protecting the Embassy Building in Its Country

In diplomatic law, the form of protection for the building of foreign diplomatic representatives has been regulated in the 1961 Vienna Convention Article 22 paragraph 2, namely regarding the prevention of all disturbances that may interfere with the comfort of diplomatic representatives in the receiving state. Therefore, the obligation carried out by the receiving state should be able to protect the foreign representative building in its country, both from disturbances, threats, and attacks on the embassy building.

If there is any kind of disturbance to the embassy building, the receiving state is required to take all measures to protect the embassy building. However, the actions taken by the receiving state should not exceed the capacity of the intended threat. One example of a case of carelessness committed by the recipient country's agencies is the case of Guatemala.<sup>10</sup>

Emi Maclean & Sophie Beaudoin "More Than 30 Years Later, Guatemala's Deadly Spanish Embassy Siege is On Trial in A Guatemalan Courtroom" < <a href="https://www.Ijmonitor.Org/2014/11/More-Than-Thirty-Years-Later-Guatemalas-Deadly-Spanish-Embassy-Siege-Is-On-Trial-In-A-Guatemalan-Courtroom/">https://www.Ijmonitor.Org/2014/11/More-Than-Thirty-Years-Later-Guatemalas-Deadly-Spanish-Embassy-Siege-Is-On-Trial-In-A-Guatemalan-Courtroom/</a> (Diakses Pada 13 Agustus 2019)

The case of Guatemala started with a demonstration by farmers and students at the Spanish embassy in Guatemala. This demonstration is a form of protest against the government for the attacks carried out on their community in the northern highlands by the Guatemalan State Security Forces. After learning about the demonstration by the Peasants and Students, the Guatemalan Security Forces immediately went to the Spanish embassy and surrounded it, ignoring the condition of the Spanish diplomatic staff and visitors who were still in the building. The Guatemalan Security Forces then attacked the Spanish embassy building without taking any action to keep those inside the building safe. This exaggeration by the Guatemalan Security Forces has left 37 people dead, including the former Spanish ambassador Máximo Cajal. The Guatemalan side should not enter the Spanish embassy building without first asking permission from the head of the Spanish diplomatic mission. This reckless and excessive act by the Guatemalan side violated the 1961 Vienna Convention and caused Pedro García Arredondo, former commander of the Guatemalan police investigation unit, to be held accountable for his actions.<sup>11</sup>

Based on the theory of exterritoriality, the diplomatic representative building is not considered a territorial area of the receiving state, which of course, causes the receiving state to be unable to impose its laws on diplomatic officials and even all forms of equipment from the receiving state cannot enter the diplomatic representative building. Thus, the actions of the Guatemalan Security Forces are clearly stated as a violation of the Vienna Convention Articles 22 and 29 which oblige the receiving state to maintain the security of the diplomatic representative building and protect diplomatic officials from all threats and disturbances.

<sup>&</sup>lt;sup>11</sup> Loc.Cit.

If there has been an attack or destruction on a foreign embassy building, the receiving state is obligated to protect the embassy building, its property, and archives. When there is an armed conflict, the receiving state must also facilitate the diplomats and help them to leave the receiving state as quickly as possible.<sup>12</sup>

Developed countries do not prohibit people with different opinions and want to express their aspirations. Even the UK has regulated the rights of people who want to voice their opinions in a covenant, namely the 1998 Human Rights Act. Article 10 paragraph 1 states that:

"Everyone has the right to freedom of expression. This right should include freedom of opinion and to receive and impart information and even ideas without interference from public authority and regardless of limitations. This research This article should not prevent countries from seeking licenses for broadcasting, television or cinema companies." <sup>13</sup>

In this article, it is stated that everyone has the right to freedom of expression, including freedom of opinion and convey information and that the ideas are not limited by public authorities. However, some limits must be considered if they want to voice their opinion in a diplomatic building. America has set the distance for the masses to express their opinions from the diplomatic building, which is 500 feet from the diplomatic building, by not displaying flags, banners, placards, or other devices intended to intimidate and force them to enter the diplomatic mission building environment.<sup>14</sup>

When the receiving state knows that there will be a demonstration directed at the foreign diplomatic representative office, the receiving state must immediately take action by providing appropriate protections for the diplomatic building. So here, it is hoped that the receiving state will respond quickly and

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<sup>&</sup>lt;sup>12</sup> Article 44, Vienna Convention on Diplomatic Relations 1961

<sup>13</sup> Human Rights Act 1998 Articles 10 (1)

<sup>&</sup>lt;sup>14</sup> René Värk, *Op.Cit*, hlm. 147.

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immediately carry out its obligations in protecting diplomatic buildings, diplomats, and the archives of the receiving state.

### **CONCLUSION**

Infiltration carried out by followers of Al Shirazi, namely climbing the balcony of the Iranian embassy building in London, is a violation. As has been stated in Article 22 that the building of the diplomatic representative cannot be disturbed or entered, then this action should not have taken place. However, as the recipient country, the UK has carried out its obligations to protect the diplomatic representative building in its country.

As is the case with the British responsibility for the Iranian embassy in London, the British immediately sent their country's equipment to the scene of the intrusion. However, the UK also could not overreact to the incident. One example of a response from a recipient country that does not match the threat is the case of Guatemala.

In the case of Guatemala, the response given by the recipient country, namely Guatemala, was an excessive act and did not match the threat. Therefore, when the receiving state protects the diplomatic representative building in its country, it must be based on the 1961 Vienna Convention and the rules of international law. In carrying out its duties, the receiving country must be able to adjust the form of the threat and the response given.

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