



## IMMUNITY OF FOREIGN EMBASSIES FROM JURISDICTION OF INDONESIAN INDUSTRIAL RELATIONS COURT OF INDONESIA (A CASE STUDY OF DECISION NUMBER 376 K/ PDT.SUS-PHI/2013)

**Fahar Fatoni**

University of Mataram

Email: [faharfatoni888@gmail.com](mailto:faharfatoni888@gmail.com)

**Muh. Risnain**

University of Mataram

Email: [Risnain82@gmail.com](mailto:Risnain82@gmail.com)

**Diva Pitaloka**

University of Mataram

Email: [Diva.pitaloka@gmail.com](mailto:Diva.pitaloka@gmail.com)

### Abstract

*This research aims to determine the position of foreign embassies within the jurisdiction of the Indonesian Industrial Relations Court under the 1961 Vienna Convention and the implementation of foreign embassies' diplomatic immunity by the Industrial Relations Court in Decision Number 376 K/Pdt.Sus-PHI/2013. This research uses a normative research method, employing both an international agreement approach and a conceptual approach. Foreign embassies enjoy several broad immunities from the jurisdiction of the receiving country. Courts in Indonesia cannot necessarily hear or decide cases involving foreign embassies. A special agreement is needed that allows diplomatic agents to comply with applicable laws in Indonesia, and this must be submitted separately. Diplomatic representatives are parties who can be involved in industrial relations dispute cases at the Industrial Relations Court. Under the 1961 Vienna Convention, these immunities and privileges are not absolute, and the receiving country has the power to reject diplomatic representation considered problematic or persona non grata.*

**Keywords:** *Diplomatic; Immunity; Industrial Relations Court.*

### A. INTRODUCTION

International law is needed to regulate, order and maintain international relations in order to ensure the certainty needed in any orderly relationship<sup>1</sup>. The International Law Commission has started the development of codification of international law including diplomatic law since 1949 in detail, especially regarding the provisions concerning diplomatic relations. In 1961 a convention was held in Vienna, Austria from 2 March to 14 April and gave birth to a convention namely the “Vienna Convention on diplomatic relations” which was ratified on 18 April 1961<sup>2</sup>.

The 1961 Vienna Convention on Diplomatic Relations is an international treaty signed on 18 April 1961 in Vienna, Austria. It deals with diplomatic relations between sovereign states. It regulates the rights and duties of diplomats, diplomatic privileges

1 Mochtar Kusumaatmadja, Etty R. Agoes, Pengantar Hukum Internasional, Cetakan Kelima, (Bandung: Alumni, 2015), hlm. 13.

2 Sumaryo Suryokusumo, Hukum Diplomatik Teori Dan Kasus, Cetakan Kedua Edisi Pertama, (Bandung: P.T. Alumni, 2005), hlm. 14.

and immunities, and the protection of diplomatic missions. It also establishes the rules of international law governing diplomatic relations between states.

This convention has been ratified by many countries around the world and is the basis of law in international diplomatic relations. Countries that ratify the convention are obliged to honour the provisions of the convention in their diplomatic relations with other countries. The convention has become the legal basis of international diplomatic relations and has helped strengthen relations between countries around the world.

The Convention is organised with the aim of strengthening diplomatic relations between countries and enhancing friendship among countries. The Convention also aims to ensure that diplomats can perform their functions effectively and efficiently and protect their rights in performing those functions. The Convention also sets out the rules of international law governing diplomatic relations between states, including diplomatic privileges and immunities.

Customary rules of international law relating to diplomatic immunities and privileges are beginning to be established, including those concerning the premises and communications of diplomats. To indicate the full scope of diplomatic immunities and privileges, the term “extraterritoriality” is often used. This term reflects the fact that diplomats should be treated as if they were not in the territory of the country they are serving in. Such privileges are conferred on diplomats by international law due to their need to perform their functions free from the jurisdiction and supervision of the receiving state.<sup>3</sup>

In practice, when assigned to a diplomatic mission, a diplomat will receive a diplomatic passport from the Minister of Foreign Affairs or an authorized official in their home country. The passport becomes an official document that identifies them as a diplomat and grants several diplomatic privileges and immunities.<sup>4</sup>

Diplomatic immunity is not only enjoyed by Ambassadors but also by their family members who reside with them, including consuls, secretaries, attachés, and others. Diplomatic officials sent from one country to another are considered to possess special, sacred status. As a consequence, they benefit from diplomatic immunities and privileges.

Articles 29 and 37 of the 1961 Vienna Convention clearly regulate the personal immunity of diplomats. Diplomatic officials are inviolable and enjoy full protection from the receiving state. They shall not be arrested or detained but must be treated with respect. The receiving state shall take appropriate measures to prevent attacks on their person, freedom, and dignity.<sup>5</sup> Therefore, diplomats have the right to receive protection from the receiving country in order to be free from interference that is detrimental to their privacy.

A diplomat has the right to protection from the receiving country and is immune to the jurisdiction of the receiving country, both criminal, civil and administrative law. However, in terms of immunity to civil jurisdiction, a diplomat is not absolutely immune but there are several exceptions that have been regulated in Article 31 paragraph 1 of the 1961 Vienna Convention which states that:

- a. A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

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3 Op. Cit., hlm. 52.

4 A. Ratna Wulan, *Pelaksanaan Kekebalan Diplomatik Dalam Konvensi Wina 1961 Perspektif Siyasa Dauliyah*, Jurnal Hukum Dan Kemanusiaan, Bandung, 2017, hlm. 195.

5 Charles G. Fenwick, *International Law*, Edisi ke-3, (New York And London: Appleton – Century – Crofts, INC., 1948), hlm. 468-469.

- b. An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- c. An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.<sup>6</sup>

Diplomatic immunity is not absolute and can be revoked if the diplomatic official commits acts that are detrimental to the national interests of the receiving state. Diplomatic immunity becomes particularly relevant in the context of termination of employment, as the immunity possessed by a diplomat can influence the legal actions taken by the receiving country.

An ambassador who represents their country in various matters cannot work alone; they are assisted by secretaries, attachés, and other staff members. In this context, it is not uncommon for foreign embassies to employ labor from the host country, and the local workforce plays a vital role in the activities carried out within the embassy. However, the duration of employment can vary for different positions. This difference can occur for various reasons, one of which is layoffs. Termination of Employment or often abbreviated as 'PHK', refers to a situation where workers stop working from business entities whether incorporated or not, private or state-owned, or other businesses that open up jobs for others. Layoff is the beginning of the loss of labour income which will certainly be a threat to the lives of workers and their families<sup>7</sup>.

The consequences arising from layoffs are very complex and can have an impact on other sectors. The state undoubtedly has a mechanism and procedure that is systematically organised to provide protection and rights in accordance with applicable regulations. The rights that should be given to workers whose employment is terminated include severance pay, long service pay and compensation pay<sup>8</sup>.

A polemic arises when there is a dispute between an employee and a party who is a diplomatic official representing a foreign country that cannot be sued in the national court and is not subject to national law based on its immunity rights to the national law of the recipient country. This has occurred in a lawsuit filed by an employee, Luis Pereira, an Indonesian national, against the Brazilian Embassy in Indonesia.

The relationship between the Plaintiff and the Defendant was based on a Contract-Working Agreement dated 1 February 2006 which was later replaced by a Work Agreement dated 1 December 2009 which contained an article confirming that the employment relationship created between the two would be subject to Indonesian labour law and if there were matters that had not been regulated in the work agreement then the applicable provisions of Indonesian national law relating to employment would follow. Article 3 of the Employment Agreement dated 1 December 2009 reads:

*“This Agreement is made under the labour law of the Republic of Indonesia and is therefore valid for an indefinite period and shall come into force on the date as stated in point 1 of the Introduction to this Agreement.”*

Article 5 paragraph 4 of the Employment Agreement dated 1 December 2009 states that:

*“In the event that the termination of employment is carried out due to reasons either related or not to Article 5 above, the implementation will always be carried out based on the laws and regulations in the field of employment of the Republic of Indonesia.”*

<sup>6</sup> The United Nation, Vienna Convention On Diplomatic Relation, Article 31 (1), 1961.

<sup>7</sup> Abdullah Sulaiman, Andi Walli, Hukum Ketenagakerjaan/Perburuhan, (Jakarta: Yayasan Pendidikan dan Pengembangan Sumber Daya Manusia, 2019), hlm. 357.

<sup>8</sup> Bernadetha Aurelia O., Hak-Hak Karyawan Yang Di-PHK Dan Yang Resign, Hukum Online, Jakarta, 2013.

On 26 August 2011 the Plaintiff was suddenly summoned and made an offer by the Defendant of termination without cause by providing a sheet containing the calculation of payments due to termination from 30 September 2011.

The Plaintiff rejected the offer, deeming it unreasonable, as it did not align with the termination procedure outlined in the applicable regulations in Indonesia. Additionally, the payment offered for the termination was very small compared to the Plaintiff's length of service. Furthermore, considering that the Plaintiff's wages had neither increased nor been adjusted for inflation, and that the Plaintiff had not received wages on time, this resulted in additional financial burdens, including penalties for the late payment of other obligations. Despite this, the Defendant insisted on giving the Plaintiff time to consider and respond to the offer.

Finally, on 9 September 2011, the Plaintiff submitted a response in the form of an offer for payment due to termination of employment, in which the Plaintiff wished to receive a Golden Shake Hand by taking into account the adjustment of his wages based on the inflation rate since 2007, which offer consisted of Total Adjustment of unpaid salaries during 2007-2010 referring to the inflation rate, Severance pay amounting to 2x the provisions of Article 156 paragraph (2) of Law No. 13 of 2003, Long Service Award in accordance with the provisions of Article 156 paragraph (3) of Law No. 13 of 2003, Reimbursement of Rights in accordance with the provisions of Article 156 paragraph (4) of Law No. 13 of 2003, and Goodwill amounting to 50 % of the total of all payments. After the offer submitted by the Plaintiff, the Plaintiff was declared off duty and asked to return home, waiting until there was a solution to his offer. In fact, the Plaintiff was no longer allowed to collect and carry his personal belongings and was asked to leave the office immediately.

On 16 September 2011 the Plaintiff sent a text message via mobile phone to the mobile phone number of one of the Defendant's staff, named Tulio Costa for the Brazilian Embassy to immediately issue a written instruction stating that the Plaintiff was off duty, and was furloughed until further notice pending the outcome of negotiations on the proposal to the Embassy. On the same day at 5.03pm, the Plaintiff received a text message via mobile phone from Tulio Costa stating that the Plaintiff could come to the office at 11 am.

Finally, on 19 September 2011, in accordance with the previous mobile phone text message communication, the Plaintiff came to the Defendant's office but the Plaintiff was presented with a Statement and asked to immediately sign it, which the Plaintiff refused to sign because he did not agree with its contents, however the Plaintiff was given a Preliminary Notice of Termination dated 19 September 2011, which stated that the Defendant had decided to terminate the employment relationship, effective immediately, in accordance with Article 5 of the Employment Agreement. Subsequently the Defendant handed over/removed the Plaintiff's personal belongings from the Plaintiff's workspace and then the Defendant paid to the Plaintiff by transferring to the Plaintiff's bank account an amount of money for the payment of the Plaintiff's wages for the month of September on a prorated basis until 19 September 2011, amounting to Rp11,780,685.00 and payment of one month's wages for 30 (thirty) days preliminary notice prior to the termination of the Employment Agreement.

From the time the Defendant offered the termination and payment on 26 August 2011 until the Defendant gave the Preliminary Notice of Termination dated 19 September 2011, stating its intention and imposing the termination, the Defendant did not disclose any reason for the termination of the Plaintiff. The termination carried out by the Defendant immediately and arbitrarily against the Plaintiff is contrary to the Laws and Regulations and is null and void.

Article 13 of the Employment Agreement dated 1 December 2009 reads:

*“This Agreement is based on the current labour laws of the Republic of Indonesia, including but not limited to Law No. 13/2003 on Manpower and Law No. 3/1992 on Labour Social Security and its implementing regulations and amendments. Other terms and conditions not specified in this Agreement shall be governed by the prevailing labour laws and regulations of the Republic of Indonesia.”*

## **B. METHODS**

The type of research used by the author is normative legal research, also known as library research. The research approach includes the international treaty approach and the conceptual approach. The technique for collecting legal materials in this research is document study, which involves reviewing literature, legislation, and documents related to the study.

## **C. ANALYSIS AND DISCUSSION**

### **1. The Position of Foreign Embassies from the Jurisdiction of the Indonesian Industrial Relations Court Based on the Vienna Convention 1961**

An embassy is a diplomatic representative of a country located in the capital of another country. Embassies and diplomatic law are inseparable. All rules, functions, rights and authorities of the embassy are regulated in diplomatic law and become a guide in establishing diplomatic relations between countries.

Many international law experts provide opinions on the definition of diplomatic law. However, in essence, diplomatic law is part of international law whose legal sources are the same as international law. A country that organises international relations by sending its diplomatic representatives to other countries based on an agreement between the countries concerned. The people appointed by the sending country as diplomatic representatives consist of the head of the delegation and its members. In terms of politics, diplomatic representatives have a diplomatic mission on permanent duty in the capital of the receiving country<sup>9</sup>.

According to Sir Ernest Satow, diplomacy is given the following limitations:

*“Diplomacy is the application of intelligence and tact to the conduct of official relations between the Governments of independent states, extending sometimes also to their relations with vassal States; or more briefly still, the conduct of business between States by peaceful means”<sup>10</sup>*

The above definition provides an important conclusion, namely: Relations between countries to promote co-operation and friendship. Such relations are conducted through exchanges between foreign diplomatic missions, including officials. Officials should be granted diplomatic status to enable them to carry out their diplomatic duties effectively. Special privileges and immunities should be granted under the rules of customary international law and other treaties governing diplomatic relations between states.

<sup>9</sup> Monik Ananda K.P. dan I Gusti Ngurah Dharma L., *KOMPETENSI PENGADILAN HUBUNGAN INDUSTRIAL DALAM MENGADILI PERSELISIHAN PEMUTUSAN HUBUNGAN KERJA ANTARA PERWAKILAN DIPLOMATIK DENGAN PEKERJA LOKAL*, Kertha Wicara: Journal Ilmu Hukum, 8, 1-17., 2019, hlm. 3.

<sup>10</sup> Gore - Booth, D. Pakenham, Satow's Guide to Diplomatie Practice, Fifth Edition, Longman Group Ltd. London, 1979, hlm. 3.

A diplomatic official or diplomatic representative has several functions in accordance with the 1961 Vienna Convention Article 3, the following are the functions of diplomatic officials:

- 1) Representing the sending State in the receiving State;
- 2) Protecting in the receiving State the interests of the sending State and of its nationals, within the 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.

The Vienna Convention of 1961, specifically Article 2 states that if a state agrees to establish diplomatic relations with another state through an instrument based on the principle of reciprocity and the principle of mutual consent, the states may consider establishing diplomatic relations<sup>11</sup>. The membership of these representatives in terms of both the level and number of representative staff is mutually agreed upon based on the principles of reasonable and normal.

The appointment of a diplomatic representative by a sending country usually does not require the consent of the receiving country, as the sending country is free to appoint a diplomatic representative and simply notifies the Ministry of Foreign Affairs of the receiving country through a diplomatic note containing the name, title, diplomatic rank, family members, and date of arrival.

Exceptions apply only to ambassadorial and defence attaché appointments, which require prior approval as a person qualified for the position or as *persona grata* (if the receiving country grants approval to the nominee). An appointment as ambassador of the sending state is deemed admissible or *persona grata* upon consent already given before the person's appointment is ratified. This is as stipulated in Article 7 of the 1961 Vienna Convention:

Article 7:

*“Subject to the provisions of articles 5, 8, 9 and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval<sup>12</sup>.”*

The appointment of an ambassador of a recipient country by the sending country requires prior approval from the recipient country. To obtain such approval, the sending country must first request approval along with the biodata of the prospective ambassador (*curriculum vitae*) which must be considered and taken into consideration in giving agreement or being declared *persona grata*. As stipulated in Article 4 paragraph (1) and (2) of the Vienna Convention 1961:

Article 4:

- 1) *The sending State must make certain that the agreement of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.*
- 2) *The receiving State is not obliged to give reasons to the sending State for a refusal of agreement<sup>13</sup>.*

11 A. Masyhur Effendi, *Hukum Konsuler-Hukum Diplomatik Serta Hak dan Kewajiban Wakil- wakil Organisasi Internasional/Negara*, IKIP Malang, 1994, hlm. 26.

12 United Nation, *Vienna Convention On Diplomatic Relation*, Article 7, 1961.

13 *Ibid*, Article 4 section (1), (2), 1961.

The receiving state's response to the granting of consent may be written or oral or there may be a long delay, which means tacitly not accepting the ambassadorial candidate chosen by the sending state. States have the inherent right to appoint ambassadors, but recipient countries have similar rights. To avoid problems that could disrupt or affect the existing relationship between countries, the receiving country must first be able to accept the prospective ambassador from the sending country<sup>14</sup>.

An ambassador or diplomatic representative in carrying out his duties needs to get freedom and security so that the mission of the sending country can run in accordance with its objectives. Various problems can arise that interfere with or affect diplomatic relations between countries, so the 1961 Vienna Convention is very concerned about this by providing diplomatic privileges and immunities to diplomatic representatives of the sending country.

The term extritoriality or extra-territoriality is often used to describe diplomatic immunities and privileges as a whole. The term reflects the fact that in almost all cases, diplomats should be treated as not being within the territory of the receiving state. Extritoriality is granted to diplomats under the national law of the receiving state based on the need for the diplomat to carry out his or her duties without the jurisdiction or supervision of the receiving state<sup>15</sup>.

According to this theory, a diplomat is not subject to the laws of the receiving country and the place of residence or representative building is an extension of the territory of the sending country so that the receiving country must protect and guard against disputes that can affect diplomatic relations. This is in accordance with Article 22 paragraph (2) of the 1961 Vienna Convention:

*Article 22 section (2):*

*“The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity<sup>16</sup>.”*

In practice, the theory of extritoriality is very hard to apply by granting immunity to diplomatic agents. This is because in practice a diplomatic official will be subject to several rules of the receiving country. For example, when a diplomatic official leaves his embassy building, he is supposed to follow the receiving country's traffic rules. Thus, diplomatic officials are expected to conform to the laws of the receiving country. *“a diplomatic agent is expected to act in conformity with the laws of the receiving state and observe its police regulations<sup>17</sup>.”*

The 1961 Vienna Convention explains a lot about the granting of diplomatic immunity to diplomatic agents of a country. Such diplomatic agents are immune to the jurisdiction of the receiving state, both criminal and civil jurisdiction. The 1961 Vienna Convention stipulates that a diplomat has immunity, he cannot be arrested or detained in any form. The receiving state must treat him with respect for this provision and must take all necessary measures to prevent attacks on his person, liberty or honour.

Therefore, in addition to granting immunity to diplomats from arrest or detention, the Convention also stipulates the obligation of the receiving state to protect the diplomat's person, liberty and honour. This is in accordance with Article 29 of the 1961 Vienna Convention:

14 Sumaryo Suryokusumo, *Hukum Perjanjian Internasional*, Tata Nusa, Jakarta, 2008, hlm.87-88.

15 Sumaryo Suryokusumo, *Hukum Diplomatik Teori Dan Kasus*, Cetakan Kedua Edisi Pertama, (Bandung: P.T. Alumni, 2005), hlm. 52.

16 United Nation, *Vienna Convention On Diplomatic Relation*, Article 22 section (2), 1961.

17 B. Sen, *A Diplomat's Hand Book of International Law and Practice*, The Hague, Netherlands, 1965, p. 81

Article 29:

*“The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity<sup>18</sup>.”*

In the provisions of Article 31 paragraph 1 of the 1961 Vienna Convention states that:

*Article 31 section (1):*

*“A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:*

- (a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;*
- (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;*
- (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.”*

Based on the provisions of Article 31 paragraph (1) of the 1961 Vienna Convention, it can be asserted that the most important consequence of the principle of inviolability of diplomatic representatives is the right of diplomatic representatives to withdraw from the jurisdiction of the receiving state in relation to criminal cases. Therefore, it can be said that diplomatic immunity is absolute and diplomats cannot be tried or convicted under any circumstances. Authorities in the receiving country may not arrest, prosecute or try diplomats in criminal cases. This does not mean that diplomats need not respect and honour the criminal laws of the receiving country. However, it should be made clear that expulsion or persona non grata action can be taken by the receiving country in very urgent circumstances. If a diplomat commits misconduct that could disrupt the domestic security or order of the receiving country, then the receiving country may detain him or her temporarily to ensure that his or her actions do not lead to undesirable consequences. However, they will still be repatriated to their country.

Article 31 of the 1961 Vienna Convention provides for three exceptions to the recipient state’s civil jurisdictional immunity. Firstly: “Real acts relating to personal immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purpose of a mission”. Satow emphasises the importance of real actions in civil law, i.e. real actions concerning the ownership of immovable property. The Vienna Conference decision is less clear on the ownership of objects kept in the embassy building or in the private residence of a diplomatic representative, unless the embassy is carrying out its mission on behalf of the sending State. However, this exception to immunity may give rise to legal action for any act relating to the ownership of property that is not subject to the law of the sending state, which could of course raise legal issues concerning the ownership of the diplomatic representative’s private residence<sup>19</sup>.

18 United Nation, *Vienna Convention On Diplomatic Relation*, Article 29, 1961.

19 Lord Gore Booth (ed), *Satow s Guide To Diplomatic Practice*, 1981, London and New York: Longman, p.125.



Second: “Acts relating to succession in which the diplomatic agent is engaged as executor, administrator, heir or representative as a private person and not on behalf of the sending state”. As part of its duty to perform its consular duties, a diplomatic representative may transfer property and bequeath money to another person in its home country upon the death of a national on the territory of the receiving state. The diplomatic representative may be responsible for the “administration” of their rights and levy taxes on the transfer of property on behalf of the government of the sending country. In this case, the right of immunity from civil jurisdiction automatically applies, even if the diplomatic representative performs acts of transfer of personal property that are not part of his or her duties<sup>20</sup>.

Third: “Acts relating to professional or commercial activities carried on by a diplomatic agent in the receiving State outside his official functions”. This third exception is further confirmed in Article 42 of the 1961 Vienna Convention: “Diplomatic agents shall not carry on professional or commercial activities for private gain in the receiving State”. Satow says that diplomats can disagree with the prohibition on professional or commercial activities. The sending and receiving countries can agree to waive these barriers. In the UK, it is possible to avoid appointing diplomats who are associated with business<sup>21</sup>.

Diplomatic officials also enjoy immunity from the obligation to be a witness. This is provided for in Article 31 paragraph 2 of the 1961 Vienna Convention:

*Article 31 section (2):*

*“A diplomatic agent is not obliged to give evidence as a witness.”*

This provision also applies to family members of diplomats who are not required to testify in court in the receiving country. In practice, however, relevant diplomatic officials may voluntarily appear as witnesses, in the belief that their testimony will maintain good relations between the two countries. This is of course done after prior consultation with their government (the sending country). To do this, the diplomat concerned must first waive diplomatic immunity.

Diplomatic law does not only provide immunity from criminal jurisdiction, but also provides immunity for diplomats from civil and administrative jurisdiction. No civil or administrative proceedings of any kind may be brought against diplomats. Enforcement of laws relating to debts or other similar matters cannot be brought against diplomats in the courts of the receiving country. Diplomats cannot be arrested for debt, nor can household goods, cars or other property be seized to pay the debt. This is in accordance with Article 31(3) of the 1961 Vienna Convention:

*Article 31 section (3):*

*“No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence<sup>22</sup>.”*

Article 32 of the 1961 Vienna Convention states that:

*Article 32:*

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<sup>20</sup> Ibid, p. 126.

<sup>21</sup> Ibid, p. 127.

<sup>22</sup> Ibid, Article 31 section (3)

- “1. *The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State.*
2. *Waiver must always be express.*
3. *The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.*
4. *Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.”*

Under Article 32 of the 1961 Vienna Convention, it is established that the immunity of diplomatic representatives and persons enjoying such immunity may be revoked by the receiving state and this revocation must be clearly stated.

Diplomatic immunity arises under international law, so those who have the right are subjects of international law. However, at present, diplomatic representatives are not subjects of international law, but equipment of the state and it is the state that functions as a subject of international law. Therefore, the sending state is the authority authorised to waive and or remove the diplomatic immunity<sup>23</sup>.

Article 33 paragraphs (1) and (2) of the 1961 Vienna Convention explains that diplomatic agents are exempted from social security provisions that may apply in the receiving country. This also applies to workers who work for diplomatic representatives on the condition that the worker is not a national of the receiving country or resident in the receiving country. However, Article 33 paragraphs (3) and (4) explain that workers who work in diplomatic missions but do not fulfil the conditions as stipulated in paragraph (2) must pay attention to social security provisions that may apply in the receiving country. Paragraph (4) of this article also does not preclude voluntary participation in the social security system of the receiving country provided that such participation is authorised by the sending country. Under the 1961 Vienna Convention, foreign embassies have some broad immunities from the jurisdiction of the receiving country, including the Industrial Relations Court in Indonesia. Courts in Indonesia cannot necessarily hear or decide cases involving foreign embassies because in this case, the authority of the Industrial Relations Court is limited. The Industrial Relations Court may hear or decide a case if there is a specific agreement allowing the diplomat's agent to be subject to the applicable laws of Indonesia or the case fits within the exceptions contained in the 1961 Vienna Convention and such exceptions must be submitted separately.

## **2. Implementation Of Diplomatic Immunity of Foreign Embassies From The Jurisdiction of The Indonesian Industrial Relations Court In Decision Number 376 K/Pdt.Sus-PHI/2013**

Diplomatic officials often abuse their duties and responsibilities by using their diplomatic rights and immunities. A country's representative may be entitled to immunities and privileges when conducting activities that violate the national laws of the receiving country.

A representative should not take refuge in his or her attributes that grant immunity and privileges when conducting activities that violate the national laws of the receiving state

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<sup>23</sup> Edy Suryono dan Moenir Arisoendha, *Hukum Diplomati, Kekebalan dan Keistimewaan*, Bandung: Angkasa, 1991, hlm. 64.

where such activities are contrary to his or her functions and duties as a representative of the state let alone his or her family members. In this case, diplomatic representatives will still enjoy immunity from the jurisdiction of the receiving state in the event of a violation of the national law of the receiving state, as this is part of the immunities and privileges provided for in the 1961 Vienna Convention.

Diplomats are granted civil and criminal immunity from the jurisdiction of the receiving state, but this immunity may be waived or set aside. The sending state has the right to invoke diplomatic immunity, but the application is usually made in advance by the receiving state, either with the special permission of the sending state or simply by the head of the diplomatic mission.

These immunities and privileges are not absolute, and the receiving country has the power to reject diplomatic representatives who are considered problematic or *persona non grata*. This is a matter of government policy regarding the rejection of foreign nationals in its territory who have diplomatic immunity. The suspension of immunity is usually done by the diplomatic representative of the sending country and is usually granted by the head of state or government. The declaration of suspension must be officially declared. As long as diplomatic immunity is not waived, he/she remains inviolable, whether arrested or detained because he/she enjoys criminal and civil immunity from the rule of law<sup>24</sup>.

The immunities and privileges of diplomatic agents are very important in the execution of a country's diplomatic mission. In carrying out their duties, diplomatic agents will need workers who assist them in all matters. However, when the workers are citizens of the receiving country, it is not uncommon for differences of opinion and even disputes to occur that can disrupt relations between the two countries. Such disputes have occurred in Indonesia, disputes involving local Indonesian workers and foreign embassies located in Indonesia. The dispute was contained in Decision Number 376 K/Pdt.Sus-PHI/2013, which involved Indonesian workers who were terminated without clear reasons by the Brazilian Embassy in Indonesia.

Decision No. 376 K/Pdt.Sus-PHI/2013 is a case of termination of employment that occurred between Luis Pereira and the Brazilian Embassy in Jakarta. The case was quite interesting due to the involvement of the Brazilian Embassy with local Indonesian workers. In the decision, there were several defences from the Brazilian Embassy as follows:

#### Absolute Competence Exception

- 1) Based on the provisions of Article 31 and Article 32 (1) of the Vienna Convention On Diplomatic Relations And Optional Protocol To The Vienna Convention On Diplomatic Relations Concerning Acquisition Of Nationality, 1961 Jo. Law No. 1/1982, it is proven that;
  - a. Embassies have immunity from the criminal and civil laws of the receiving State;
  - b. Against the Embassy can not be done Execution action;
  - c. The legal immunity of an Embassy may only be withdrawn by the home State of the Embassy;
- 2) The territory in which the Embassy of a foreign State is located is the territory of a foreign State in another State so that it is the jurisdiction of the foreign State concerned. This is because the territory of the foreign Embassy is part of the territory of the State it represents;
- 3) Embassies of foreign countries have legal immunity. Therefore, if there is a legal action that occurs within a foreign Embassy, the foreign Embassy has immunity to

<sup>24</sup> Sumaryo Suryokusumo, *Hukum Diplomati Teori Dan Kasus*, Cetakan Kedua Edisi Pertama, (Bandung: P.T. Alumi, 2005), hlm. 144.

the applicable law in the country where the Embassy is located. Thus the applicable law of the Embassy is the law of its home country;

- 4) It is proven that:
- a. The Defendant is the Embassy of the Republic of Brazil and therefore a representative of the Republic of Brazil;
  - b. The territory where the Defendant is located is the territory of the Republic of Brazil;
  - c. The applicable law in the territory of the Defendant is the applicable law of the Republic of Brazil;
  - d. Indonesian law does not apply in the territory of the Brazilian Embassy;
  - e. Each Embassy has diplomatic immunity;
  - f. The Plaintiff works for the Defendant which is a representative of the Republic of Brazil, which means that the Plaintiff works in the territory of the Republic of Brazil;

Based on the Definitions in Article 1 Paragraph (4), Paragraph (5) and Paragraph (6) of Law No. 13/2003, the Representative Office of a Foreign State or Embassy is not an Employer, Employer or Company;

- 5) Article 1 paragraph (4) of Law No. 13/2003 stipulates; “An employer is an individual, an entrepreneur, a legal entity, or other bodies that employs labour by paying wages or other forms of compensation”;
- 6) Article 1 paragraph (5) of Law No. 13/2003 stipulates; “Employers are:
- a. A natural person, partnership, or legal entity operating an enterprise owned by itself;
  - b. An individual, partnership, or legal entity that independently runs a company that is not its own;
  - c. Individuals, partnerships, or legal entities located in Indonesia representing companies as referred to in letters (a) and (b) which are domiciled outside the territory of Indonesia”;
- 7) Article 1 paragraph (6) of Law No. 13/2003 stipulates; “Company is:
- a. Any form of business incorporated or not, owned by an individual, owned by a partnership, or owned by a legal entity, either privately owned or State owned that employs workers/labourers by paying wages or compensation in other forms;
  - b. Social enterprises and other enterprises that have managers and employ other people by paying wages or other forms of compensation.”;
- 8) Proven based on Article 1 paragraph (4), paragraph (5) and paragraph (6) of Law No. 13/2003;
- a. What is meant by Employer, Employer and Company are:
    - 1) A natural person;
    - 2) Partnership;
    - 3) Legal Entity;
  - b. Embassies are not included in the definition of Employer and Company;
- 9) Article 1 paragraph (15) of Law No. 13/2003 stipulates:
- “Employment relationship is a relationship between an Employer and an employee/labourer based on a work agreement, which has the elements of worker, wage, and government”;*

- 10) Article 1 paragraph (25) of Law No. 13/2003 stipulates:

*“Termination of employment relationship is the termination of employment relationship*

*due to a certain matter which results in the end of rights and obligations between the worker/labourer and the employer”;*

11) Article 150 of Law No. 13/2003 stipulates:

*“The provisions regarding termination of employment in this law cover termination of employment that occurs in business entities that are incorporated or not, owned by individuals, owned by partnerships or owned by legal entities, both privately owned and State-owned, as well as social enterprises and other businesses that have managers and employ other people by paying wages or compensation in other forms”;*

Based on Article 150 of Law No. 13/2003, it is evident that the provisions on termination of employment in Law No. 13/2003 do not apply and therefore cannot be enforced in the event of termination of employment of workers working in foreign embassies located in Indonesia;

12) Article 1 (1) of Law No. 2/2004 stipulates that:

*“Industrial Relations Disputes are differences of opinion that result in conflict between employers or a combination of employers and workers/labourers or trade unions/labour unions due to disputes over rights, disputes over termination of employment and disputes between trade unions/labour unions within one company”;*

As the Defendant does not fall within the definition of Employer, Employer and Company as set out in Article 1(4), (5) and (6) of Law No. 13/2003, therefore based on Article 1(1) of Law No. 2/2004, it is evident that there is no industrial relations dispute between the Plaintiff and the Defendant;

The Panel of Judges must declare itself absolutely without jurisdiction to hear and adjudicate this case;

13) Based on the above, it is proven and undeniable that:

- a. As set out in Article 1(4), (5) and (6) of Law No. 13/2003, the Defendant which is an Embassy does not fall within the definition of Employer, Employer and Company;
- b. Pursuant to Article 1(1) of Law No. 2/2004 there is no industrial relations dispute between the Plaintiff and the Defendant;

As there is no industrial relations dispute, the Industrial Relations Court at the Central Jakarta District Court is not authorised to examine and hear this case;

Grounds of Cassation

- 1) The *Judex Facti*'s Sela Decision in the case a quo is incorrect because the *Judex Facti* did not consider Law No. 1/1982 on the Ratification of the Vienna Convention On Diplomatic Relations and Optional Protocol To The Vienna Convention On Diplomatic Relations Concerning Acquisition Of Nationality, 1961) and the ratification of the Vienna Convention On Consular Relations And Optional Protocol To The Vienna Convention On Consular Relations Concerning Acquisition Of Nationality, 1963;
- 2) Evidenced by Law No. 1/1982 on the Ratification of the Vienna Convention On Diplomatic Relations And Optional Protocol To The Vienna Convention On Diplomatic Relations Concerning Acquisition Of Nationality, 1961 and the Ratification of the Vienna Convention On Consular Relations And Optional Protocol To The Vienna Convention On Consular Relations Concerning Acquisition Of Nationality, 1963 that:
  - a. Embassies are diplomatic representatives of other countries;
  - b. The function of the Embassy is as a representative of the Embassy's home country;

- c. The Embassy has legal immunity to the Criminal law and Civil law of the country that receives it;
  - d. Against the Embassy can not be done Execution action;
  - e. The legal immunity of the Embassy can only be withdrawn by the country of origin of the Embassy;
- 3) As the Cassation Petitioner is a representative of the Republic of Brazil, it is evident that:
- a. The applicable law in the territory of the Cassation Petitioner is the applicable law of the Republic of Brazil;
  - b. The Embassy of the Republic of Brazil as a diplomatic representative has diplomatic immunity;
  - c. The office where the Republic of Brazil is located is the territory of the Republic of Brazil;
  - d. The Cassation Respondent works for the Cassation Petitioner which is a representative of the Republic of Brazil;
  - e. Thus the Cassation Respondent was working in the territory of the Republic of Brazil;
- 4) It is evident that although there was a choice of law in the agreement between the Cassation Petitioner and the Cassation Respondent Plaintiff and Defendant, this does not necessarily mean that the law of Indonesia can be immediately applied at the Embassy of the Republic of Brazil which is the territory of the Republic of Brazil. The sovereignty of the area where the Embassy of a foreign country is located is the sovereign territory of the country of origin. So that what applies in the embassy of a foreign country is the law of the country of origin;
- 5) Based on Article 15 of the Vienna Convention on the Ratification of the Vienna Convention on Diplomatic Relations and its Optional Protocol (Article 15 Vienna Convention On Diplomatic Relations And Optional Protocol To The Vienna Convention On Diplomatic Relations Concerning Acquisition Of Nationality, 1961) Jo. Law Number 1/1/1982, it is evident that the definition of a diplomatic mission of a foreign embassy is to carry out State Duties for the country of origin and not to carry out business activities. This is because the Embassy of a foreign country is a representative of a foreign country that carries out diplomatic missions;
- 6) Based on Article 1 paragraph (4) of Law No. 13/2003, what is meant by Employer is:
- a. A natural person;
  - b. Employer;
  - c. Legal entity;
  - d. Other bodies;
- It is proven that the embassy of a foreign country which is a representative of a foreign country is not:
- a. A natural person;
  - b. Entrepreneur;
  - c. Legal Entity;
  - d. Other bodies;
- Thus, based on Article 1 paragraph (4) of Law No. 13/2003, the embassy of a foreign country is not included in the definition of Employer;
- 7) Based on Article 1 paragraph (5) of Law No. 13/2003, the definition of Employer is:
- a. A natural person;

- b. Partnership;
- c. Legal entity;
- d. Those who run their own company, those who run a company that is not theirs or those who represent a company domiciled outside the territory of Indonesia;

It is proven that the embassy of a foreign country which is a representative of a foreign country is not:

- a. A natural person;
- b. Partnership;
- c. Legal entity;
- d. Not running their own company, running a company that is not theirs or being in Indonesia representing a company domiciled outside the territory of Indonesia;

Thus, based on Article 1 paragraph (5) of Law No. 13/2003, the embassy of a foreign country is not included in the definition of Entrepreneur;

- 8) Based on Article 1 paragraph (6) of Law No. 13/2003, what is meant by Company is any form of business incorporated or not:
- a. Owned by an individual;
  - b. Owned by a partnership;
  - c. Belonging to a legal entity;
  - d. Privately owned or state-owned;

Evidently based on Article 1 paragraph (6) of Law No. 13/2003 Embassies of foreign countries are not a form of business. Therefore, Embassies of foreign countries are not included in the definition of a Company;

- 9) Based on the foregoing, it is evident that pursuant to Article I paragraph (4), paragraph (5) and paragraph (6) of Law No. 13/2003 as a foreign Embassy the Cassation Petitioner does not fall within the definition of:
- a. Entrepreneur;
  - b. Employer;
  - c. Company;

- 10) Based on Article 150 of Law No. 13/2003, it is proven that the provisions on termination of employment in Law No. 13/2003 do not apply and therefore cannot be enforced in the event of termination of employment of workers working at foreign embassies in Indonesia;

- 11) Based on the above, it is proven and undeniable that:
- a. The Cassation Petitioner, which is an embassy, does not fall within the definition of Employer, Employer and Company as set out in Article 1(4), (5) and (6) of Law No. 13/2003;
  - b. Pursuant to Article I (I) of Law No. 2/2004 there is no industrial relations dispute between the Cassation Petitioner and the Cassation Respondent;

- 12) As there is no industrial relations dispute, the *Judex Facti* must declare itself not authorised to examine and hear this case;

- 13) The Cassation Petitioner strongly objects to the *Judex Facti's* consideration on page 30, Paragraph I and Paragraph 2 of the decision as follows:

*“That in examining this case, concerning the Defendant’s diplomatic immunity rights, binding on the Defendant’s position is the embassy of a foreign State to the State of Indonesia, apart from what has been considered in the interlocutory decision, the Judges emphasised the employment agreement between the Plaintiff and the Defendant, both based on the Contract-Working Agreement dated 1 February 2006 (Exhibit P-1a), as well as based on the employment agreement dated 01 December 2009 (Exhibit P-2)”;*

*“That in Article 3 of the Employment Agreement it is stated that the Agreement is made under the labour law of the Republic of Indonesia. The provision in Article 3 confirms that the applicable law in regulating the rights and obligations between the Plaintiff and the Defendant is the labour law applicable in Indonesia. The provision also confirms that the forum or court that will adjudicate the industrial relations dispute between the Plaintiff and the Defendant is the industrial relations court, in this case the Industrial Relations Court at the Central Jakarta District Court as referred to in Article 81 of Law Number 2 of 2004, the provision also confirms that the Defendant acknowledges or submits itself as an employer as referred to in Article 1 point 4 of Law Number 13 of 2003. Therefore, the provision in Article 3 of the employment agreement confirms or refutes the arguments made by the Plaintiff.”;*

- 14) The Cassation Petitioner objects to the *Judex Facti's* legal reasoning because the *Judex Facti* erred in applying the law because it did not consider Article 3, Article 15 of Law No. 1/1982 and the Explanation of Law No. 1/1982 on the Ratification of the Vienna Convention On Diplomatic Relations And Optional Protocol To The Vienna Convention On Diplomatic Relations Concerning Acquisition Of Nationality, 1961) and ratification of the Vienna Convention On Consular Relations And Optional Protocol To The Vienna Convention On Consular Relations Concerning Acquisition Of Nationality, 1963;
- 15) Based on Article 3 and Article 15 of the Vienna Convention on the Ratification of the Vienna Convention on Diplomatic Relations and its Optional Protocol (Article 14 Vienna Convention On Diplomatic Relations And Optional Protocol To The Vienna Convention On Diplomatic Relations Concerning Acquisition Of Nationality, 1961) Jo. The Explanation of Law No. 1/1982 mentioned above clearly proves that the Cassation Petitioner as an Embassy of a foreign country is in charge of carrying out state duties and not business activities;
- 16) Therefore, as a foreign embassy carrying out state duties, the Cassation Petitioner cannot be classified as an employer in accordance with Article 1(4) of Law No. 13/2003. This is because it is proven that the Cassation Petitioner is not:
  - a. A natural person;
  - b. An entrepreneur;
  - c. Legal entity;
  - d. Other bodies;As stipulated in Article 1 paragraph (4) of Law Number 13/2003;
- 17) Article 3 and Article 15 of the Vienna Convention on the Ratification of the Vienna Convention on Diplomatic Relations and its Optional Protocol (Article 14 Vienna Convention On Diplomatic Relations And Optional Protocol To The Vienna Convention On Diplomatic Relations Concerning Acquisition Of Nationality, 1961) Jo. The Explanation of Law No. 1/1982 also proves that the Cassation Petitioner as a foreign embassy is not an entrepreneur or company in accordance with Article 1(5) and (6) of Law No. 13/2003. This is because it is proven that the Cassation Petitioner is not:
  - a. A natural person;
  - b. A partnership;
  - c. Legal Entity;
  - d. Running his/her own company, running a company that is not his/her own or is in Indonesia representing a company domiciled outside the territory of Indonesia;
  - e. Is a form of business;



18) Based on the foregoing, it is evident that the Cassation Petitioner does not fall within the definition of Employer, Employer and Company as set out in Article 1(4), (5) and (6) of Law No. 13/2003. Thus the *Judex Facti's* consideration that the Cassation Petitioner is an Employer is clearly a wrong and erroneous consideration, because the *Judex Facti* did not consider Article 3, Article 15 of Law No. 1/1982 and the Explanation of Law No. 1/1982 on the Ratification of the Vienna Convention On Diplomatic Relations And Optional Protocol To The Vienna Convention On Diplomatic Relations Concerning Acquisition Of Nationality, 1961) and the ratification of the Vienna Convention On Consular Relations And Optional Protocol To The Vienna Convention On Consular Relations Concerning Acquisition Of Nationality, 1963).

Supreme Court Opinion

- 1) That the reasons for the cassation cannot be justified, because carefully examining the cassation memorandum dated 14 March 2013 and the counter cassation memorandum dated 11 June 2013 in connection with the consideration of the decision of the *Judex Facti* / Industrial Relations Court at the Central Jakarta District Court did not err in applying the law and has given sufficient consideration, because from the facts of the trial it appears that the Defendant is the employer of the Plaintiff and has been for more than 6 (six) years and the Defendant has terminated the employment relationship with the Plaintiff without any fault, therefore the Plaintiff is entitled to receive compensation for termination of employment from the Defendant as considered by the *Judex Facti*;
- 2) Considering, that based on the above considerations, it is evident that the decision of the Industrial Relations Court at the Central Jakarta District Court in this case is not contrary to the law and/or the law, so that the cassation petition filed by the Cassation Petitioner: The Ambassador of BRAZIL IN JAKARTA must be rejected.

The opinion of the Supreme Court in the decision seems to ignore the diplomatic immunity of foreign embassies according to the 1961 Vienna Convention. The Supreme Court did not consider the 1961 Vienna Convention as a basis for decision-making, which the 1961 Vienna Convention is a convention that is a reference in diplomatic relations between countries. The Supreme Court tends to only look from the angle of Indonesian national law without paying attention to the fact that foreign embassies have diplomatic immunity based on the 1961 Vienna Convention.

In this case, the following facts can be found<sup>25</sup>:

- a) The Local Worker established an employment relationship with the Diplomatic Representative of Brazil based on a Contract-Working Agreement, dated 1 December 2009, which agreement is subject to Indonesian labour law;
- b) The Local Worker suddenly and without any reason received a layoff offer from the Brazilian Embassy and provided a sheet in the form of a layoff calculation in the amount of Rp197,653,715.00;
- c) The Local Worker believes that the layoff is not in accordance with the agreement and Law No. 13 of 2003 on Labour (“Labour Law”);
- d) Bipartite and Tripartite efforts were unsuccessful because the Brazilian Embassy did not honour the summons;

<sup>25</sup> Retna Seruni, “Kepastian Hukum Eksekusi Putusan Pengadilan Hubungan Industrial Terhadap Perwakilan Diplomatik Di Indonesia”, “Dharmasisya” Jurnal Program Magister Hukum FHUI: Vol. 1, Article 32., 2022, hlm. 2079-2080.

- e) The Brazilian Embassy in its reply to the lawsuit filed an absolute competence exception arguing that (1) the embassy is neither a legal subject nor an Employer; (2) the embassy has legal immunity; and (3) the embassy cannot be executed;
- f) The PHI Decision at the First Level gave considerations including “The Defendant’s diplomatic immunity is not applied because the Defendant’s position based on the Contract-Working Agreement dated 1 February 2006 and based on the employment agreement dated 1 December 2009, is subject to Indonesian law”;
- g) PHI Decision at the Cassation level upheld the PHI Decision at the First Level with legal considerations: “That the reasons for the cassation cannot be justified, because carefully examining the cassation memorandum dated 14 March 2013 and the counter cassation memorandum dated 11 June 2013 in connection with the consideration of the decision of the *Judex Facti* / Industrial Relations Court at the Central Jakarta District Court did not err in applying the law and has given sufficient consideration, because from the facts of the trial it turns out that the Defendant is the employer of the Plaintiff and has lasted more than 6 (six) years and the Defendant has terminated the employment relationship with the Plaintiff without any fault”;
- h) Punish the Brazilian Embassy to pay wages during the termination process in the amount of IDR 231,318,965.00 and payments due to termination in the amount of IDR 379,920,650.8;
- i) Punish the Cassation Petitioner to pay the costs of the case at the cassation level in the amount of Rp500,000.00 (five hundred thousand rupiah).

From the facts of the trial above, if only referring to Article 31 of the 1961 Vienna Convention, diplomatic agents cannot be tried and executed because diplomatic agents have immunity to the jurisdiction of the receiving country. The exceptions contained in Article 31 paragraph (1) subparagraphs (a), (b) and (c) are not relevant in the case, so the Indonesian Industrial Relations Court does not have jurisdiction over the case.

However, Article 33 paragraph (4) of the 1961 Vienna Convention reads:

*Article 33 section (4):*

*“The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.<sup>26</sup>”*

The article explains that a diplomatic agent’s immunity to social security that may apply in the receiving country may be waived provided that participation in such social security is voluntary and authorised by the sending country. This is very relevant to the above case, because based on the Contract-Working Agreement dated 1 February 2006 and based on the employment agreement dated 01 December 2009, it explains that the parties to the agreement agree to submit to the jurisdiction of Indonesia in this case the Labour Law of the Republic of Indonesia.

Indonesia also needs to ratify the United Nations Convention on Jurisdictional Immunities of States and Their Property 2004 (United Nations Convention on

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26 United Nation, *Vienna Convention On Diplomatic Relation*, Article 33 section (4), 1961.

Jurisdictional Immunities of States and Their Property 2004), which in Article 11 of this convention regulates the actions of foreign states in conducting employment agreements where employment agreements are actions that cannot be granted immunity<sup>27</sup>.

Diplomatic Representatives are parties that can be drawn as parties in industrial relations disputes at the Industrial Relations Court. As affirmed in Supreme Court Circular Letter No. 4 of 2016 concerning the Implementation of the Formulation of the Results of the 2016 Plenary Meeting of the Supreme Court Chamber as Guidelines for the Implementation of Duties for the Court, which reads as follows:

*“The exception is that the Industrial Relations Court (PHI) has the authority to examine and decide disputes on termination of employment between local workers/employees/staff and representatives of foreign countries (embassies, business representatives, etc.) in Indonesia because foreign representatives are employers as referred to in Article 1 paragraph 4 of Law Number 13 Year 2003 on Manpower. Therefore, the provisions of Law Number 13 Year 2003 on Manpower apply to the employment agreement made by the foreign State Representative with local workers/employees/staff.”*

Thus, the Industrial Relations Court has the right to examine, hear and issue decisions regarding industrial relations disputes committed by diplomatic representatives in Indonesia. From an institutional perspective, the Industrial Relations Court has the power and authority to resolve Industrial Relations Court decisions regarding diplomatic representatives. The decision of the Industrial Relations Court against diplomatic representatives is a form of legal certainty given to local workers so that they can obtain their rights to termination of employment.

#### **D. CONCLUSION**

Under the 1961 Vienna Convention, foreign embassies have some broad immunities from the jurisdiction of the receiving state, including the Industrial Relations Court in Indonesia. Based on the provisions of Article 31 paragraph (1) of the 1961 Vienna Convention, it can be asserted that the most important consequence of the principle of inviolability of diplomatic representatives is the right of diplomatic representatives to withdraw from the jurisdiction of the receiving state in relation to criminal cases. Therefore, it can be said that diplomatic immunity is absolute and diplomats cannot be tried or convicted under any circumstances. Authorities in the receiving country may not arrest, prosecute or try diplomats. This does not mean that diplomats do not need to respect and honour the laws of the receiving country.

The implementation of diplomatic immunity of foreign embassies from the jurisdiction of the Indonesian Industrial Relations Court in Decision Number 376 K/Pdt.Sus-PHI/2013 does not use diplomatic immunity as the basis for deciding cases. The Supreme Court tends to view the issue solely through the lens of Indonesian national law, without considering the fact that foreign embassies are granted diplomatic immunity under the 1961 Vienna Convention. According to Article 32 of the 1961 Vienna Convention, the immunity of diplomatic representatives and persons enjoying such immunity may be revoked by the receiving state, and this revocation must be clearly stated. Additionally, Article 33(4) of the 1961 Vienna Convention provides that the immunity of diplomatic agents from social security obligations in the receiving state may be waived, provided

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<sup>27</sup> Revirta Arshinta S. dan Abdul Maasba Magassing, “Kekebalan Kedutaan Besar Dan Konsulat Asing Dalam Penyelesaian Perselisihan Perburuhan”, Riau Law Journal, Vol. 2 No.1, 2018, hlm. 86.

that participation in such social security is voluntary and authorized by the sending state.

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