



Implementation Of The Principle Of Immunity For Consular Posts Of The Sending State In The Receiving State

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ARTICLE INFO	ABSTRACT
<p>Keywords : <i>Inviolability, Jurisdiction, State Responsibility</i></p> <p>Submitted: 2023-11-17</p> <p>Last revised: 2024-05-28</p> <p>Accepted: 2024-06-28</p> <p>DOI : 10.25077/alj.v9i1.64</p>	<p>The consular representative building is an extraterritorial territory of the sending country, and the sending country has jurisdiction over that territory. The <i>trespassing</i> incident that occurred at the Indonesian Consular Post by unknown people in Melbourne during 2017 to 2020 period was a violation of existing immunity rights. Based on the concept of diplomatic immunity, the receiving state must protect foreign consular posts in its territory. The method used in this research is a normative juridical research method. The data used is secondary data. Data is presented qualitatively and analyzed descriptively. The results of this research are that <i>trespassing</i> and raising the Morning Star flag is a form of "<i>disturbance of the peace of consular post.</i>" Because of this incident, Australia is still unable to protect the building of the Indonesian Consulate General in Melbourne as an implementation of <i>special duty</i> Article 31 paragraph (3) of the Vienna Convention 1963, during the second Morning Star flag-raising incident, gave rise to state responsibility obligations. The suggestion from this research is that there needs to be a joint commitment to implementing the provisions of the 1963 Vienna Convention through a written cooperation mechanism procedure.</p>

1. Introduction

The state is the most important and largest subject of international law in international law. States, as subjects of international law, have the ability to establish international relations.¹ A country's ability to establish relations with other countries is a manifestation of external sovereignty. This can provide recognition from other countries that the country can protect its territorial territory. With the existence of international relations, closer and more harmonious cooperation can be established between one country and another.²

International relations between countries can be carried out in various ways, one of which is by opening consular relations. Consular representatives are representatives who carry out all the affairs and interests of the sending country.³ Consular relations are non-political, meaning that consular relations are limited to matters to advance trade and commerce and for the interests of citizens residing in the territory of the country concerned.⁴ Consular relations had grown and developed before the existence of a diplomatic representation system. If a country has agreed to establish consular relations with another country, these countries agree to open consular relations. The opening of consular relations is regulated in Article 2 of the 1963 Vienna Convention on Consular Relations. By establishing consular relations, related countries can send consular representatives to carry out consular functions and duties.

The functions of consular representatives are regulated in Article 3 of the 1963 Vienna Convention on Consular Relations, namely, "*Consular functions are exercised by consular posts. Diplomatic missions also exercise them in accordance with the provisions of the present Convention*". Consular representatives, in carrying out their functions, have consular immunities and privileges as regulated in the 1963 Vienna Convention. Consular representatives' *inviolability* and immunities give consequences to the receiving country to take all actions deemed necessary to protect consular buildings or offices from all damage and attacks and to take preventive measures for any disturbance that could reduce the dignity of the building or consular representative office. This is regulated in Article 31 of the 1963 Vienna Convention.

In practice, there are still incidents of disturbances to consular buildings or representative offices. The incident of flying the Morning Star flag at the Consulate General of the Republic of Indonesia (KJRI) in Melbourne, Australia on January 6, 2017

¹Sefriana, *Hukum Internasional: Suatu Pengantar* (Rajawali Pers, n.d.). 94

²Anna Anindita Nur Pustika, 'Arti Penting Mandatory Access Consular Notification dalam Hubungan Konsuler', *Jurnal Hukum Lex Generalis* 3, no. 1 (1 January 2022): 17–31, <https://doi.org/10.56370/jhlg.v3i1.168>.

³Christianty NF Tambaritji, 'Legal Aspects Of The Position Of Consular Representatives In The Implementation Of Cooperative Relations Between Countries According To The 1963 Vienna Convention', *Lex Et Societatis VII* 3 (2019). 148–54.

⁴Muhammad Adam Firdaus, 'Analysis Of Diplomatic Law In Lifting The Honorary Consul Of The State Of Indonesia To Palestine', *Jurnal Pendidikan Kewarganegaraan Undiksha* 10, no. 2 (24 October 2022): 341–52, <https://doi.org/10.23887/jpku.v10i2.47078>. P. 84.

was one of the incidents involving disturbances to the representative building. It is known that the incident of raising the Morning Star flag was carried out by local residents by jumping over the wall of the Indonesian Consulate General through the 2.5-meter-high apartment building next to the Indonesian Consulate General.⁵

The incident of flying the Morning Star flag at the Indonesian Consulate General in Melbourne did not stop in 2017. This incident was repeated in 2020, namely on December 1, 2020.⁶ The incident of flying the Morning Star flag, which is identical to the Free Papua Organization (OPM), and the installation of a banner that read " *Free West Papua*" and " *TNI Out Stop Killing Papua*" were carried out by 5 (five) people whose identities were unknown and infiltrated the building of the Consulate General of the Republic of Indonesia (KJRI) in Melbourne, Australia. This incident was considered a violation of the consular building by the Receiving Country, namely Australia.

This incident clearly contradicts the mandate of the 1963 Vienna Convention, which states that the consular representative building cannot be contested and has immunity like a country that has sovereignty. In international law, the concept of state responsibility is known. This is regulated in the 2001 *Draft - Responsibility of States for Internationally Wrongful Acts*. Article 1 of the Draft article explains that " *Every internationally wrongful act of State entails the international responsibility of that State*". In certain countries, due to an act or omission that violates international legal obligations and damage or loss as a result of the unlawful act or omission.⁷ The concept of the birth of state responsibility is based on the fact that no country can enjoy its rights without respecting the rights of other countries.⁸ Based on the background, the author is interested in analyzing how the principle of immunity is implemented in the consular representative building (a case study of the Indonesian Consulate General in Melbourne) and what is the responsibility of the receiving country for disturbances committed by its citizens in the foreign consular representative building (a case study of the Indonesian Consulate General in Melbourne)?

2. Method

The research method used in this research uses normative juridical research methods. The approach used is the statute approach, namely the 1963 Vienna Convention on Consular Relations, and this research approach is by case approach, by analyzing a

⁵DPR-RI, "Parliamentary Bulletin" (Jakarta), 3-4., 2017.

⁶The Jakarta Post, 'Indonesia Condemns Papuan Flag Incident in Melbourne - National', The Jakarta Post, accessed 1 August 2024, <https://www.thejakartapost.com/news/2017/01/07/indonesia-condemns-papuan-flag-incident-in-melbourne.html>.

⁷Sefriani, p. 255.

⁸Putu Agus Harry Sanjaya, Dewa Gede Sudika Mangku, Ni Putu Rai Yuliantini, 'Legal Protection of Diplomatic Representative Buildings in the Perspective of the 1961 Vienna Convention (Case Study of Bomb Explosions at the Embassy of the Republic of Indonesia (KBRI) Carried Out by Saudi Arabia in Yemen)', ", *Ganesha University of Education Yustisia Community e-Journa* 2, no. 1 (2019).

specific case, namely the incident of the flying of the Morning Star flag at the Indonesian Consulate General in Melbourne, Australia, on January 6, 2017, and December 1, 2020.

This research uses secondary data, including primary legal materials, namely The 1963 Vienna Convention on Consular Relations, and secondary legal materials, namely literature books and legal journals based on formulated problem topics. The data that has been collected is presented qualitatively and analyzed descriptively, namely describing the regulatory framework in the form of regulations or norms related to several problems studied so that the previously determined problem formulation can be resolved.

3. Implementation of the Principle of Immunity in Consular Representative Buildings (Case Study of the Indonesian Consulate General in Melbourne)

The opening of consular relations is a manifestation of external sovereignty, where the state has the power to carry out foreign relations without any coercion from anyone. Opening consular relations is a necessity for a country to protect the interests of its citizens in the receiving country, such as issuing passports and travel documents to citizens of the sending country, visas or other documents, assisting citizens of the sending country, acting as notaries and civil registry officials, in addition, Consular representatives are also useful for advancing trade, economic, cultural and scientific relations in the sending country, as well as observing the conditions and developments in the fields of trade, economy, culture and science in the receiving state. Consular representatives also exercise the right to monitor and inspect ships of the sending country as well as other functions that are not prohibited by the laws and regulations of the receiving country.

Based on the duties and functions of consular representatives, to support their performance, the 1963 Vienna Convention provides privileges and immunities for consular representatives. The provisions governing the immunity rights and privileges of diplomatic and consular representatives in Indonesian law are contained in Article 16 of Law No. 37 of 1999 concerning Foreign Relations. This Article has emphasized that certain immunities, privileges, and exemptions from obligations can only be granted to parties determined by international agreements that have been ratified by Indonesia in accordance with national legislation and international customary law.

Regulations on granting immunity rights and privileges to diplomatic and consular representatives in this case have been stated in Law Number 1 of 1982 concerning Ratification of the Vienna Convention Concerning Diplomatic Relations and its Optional Protocol Concerning Obtaining Citizenship (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 Concerning Consular Relations and its Optional Protocol Concerning the Acquisition of Nationality (Vienna Convention on Consular Relations and Optional Protocol to The Vienna Convention on Consular Relations Concerning Acquisition of Nationality, 1963).

The immunity rights of consular representatives include two meanings, namely inviolability and immunities. Inviolability is immunity against the government organs or instruments of power of the recipient country, is immune to all detrimental interference, and has the right to receive protection from the government organs of the recipient country.⁹

Diplomatic Immunity is immunity from the jurisdiction of the courts of the recipient country, whether criminal, civil, or administrative jurisdiction. Immunity includes the personal immunity of consular officials/agents and the immunity of the families of consular officials/agents. However, immunity and privileges are not granted to families in full.

Agreements regarding the immunity rights and privileges of consular representatives are contained in the 1963 Vienna Convention on Consular Relations. This convention has 79 articles and is divided into 5 (five) chapters. In connection with the regulations regarding the forms of immunity and privileges of consular representatives in the 1963 Vienna Convention, it is contained in Chapter Two, namely Articles 28-57. Consular immunity includes, among other things, Article 31, which discusses the inviolability of consular buildings; Article 33, concerning consular archives and documents that cannot be contested at any time and wherever they are; Article 41, which discusses the personal immunity of consular representatives.

The principle of immunity in consular relations is provided to support the function of consular representatives in carrying out their duties. Based on the theory of functional needs, the immunity rights and privileges of diplomatic/consular representatives are given to provide the widest possible opportunity for consular representatives to carry out their duties effectively and efficiently.¹⁰ This theoretical view is based on the function of consular representatives themselves, where in carrying out their duties, consular representatives need freedom and flexibility in carrying out their duties.¹¹ Based on *functional necessity theory*, Immunity is known as the right to protection *for* representatives in the receiving country.

⁹Syahmin Aka, *Diplomatic Law An Introduction* (Bandung: Armiko, 1998). 119.

¹⁰ Marinković, Nemanja, 'International-Legal Regulation as a Determinant for Measures and Procedures of the Competent State Authorities towards Diplomatic-Consular Representatives', *NBP-Nauka, Bezbednost* 3, no. Policija (2019): 73–86.

¹¹Deicy Natalia Karamoy, 'Diplomatic Immunities and Privileges Under International Law', *Let Et Societatis VI* 5 (2018): 8–12.

The Indonesian Consulate General in Melbourne is an Indonesian representative building in Australia, a place for Indonesian consular representatives to carry out their duties. The Indonesian Consulate General building is based on extraterritorial principles; diplomatic or consular officials are considered not to be under the receiving country but are in the sending country, and the building or residence of diplomatic or consular officials is considered an extension of the sending country so that its existence must be respected and inviolable.

The inviolability of the consular premises is regulated in Article 31 of the 1963 Vienna Convention on Consular Relations, relating to the inviolability of the consular premises, explaining that the consular representative building is inviolable and immune from all interference, including by the authorities of the receiving State. Entering the representative building without the approval of the head of the consular post or official authorized to do so. In addition, this Article also stipulates that the receiving State is obliged to protect the consular building from all disturbances or damage that may occur and take appropriate steps to protect the consular building against disturbance or damage as well as to prevent disturbances to the security of the consular post or threats to dignity or sovereignty sending state.

The inviolability of the consular representative regarding the right of immunity to the consular representative building has consequences for the receiving country; these consequences are regulated in Article 59 of the 1963 Vienna Convention on Consular Relations, which stipulates that the receiving State has an obligation to protect the consular building against interference or damage that may occur and to prevent peace disturbances that could harm the dignity of the sending country's consular representative building.

The articles of the Vienna Convention above regulate the immunity rights and privileges of consular representative buildings and provide for the obligation of the receiving country to protect consular representative buildings from all disturbances to peace and security, but in practice, there are still violations therein.

The flying of the Morning Star flag, which is identical to the Free Papua Organization (OPM), which occurred at the Consulate General of the Republic of Indonesia in Melbourne, Australia, can be said to be a disturbance to the peace that occurred at the consular representative building. This incident occurred on January 6, 2017, and December 1, 2020. Both incidents had the same incident pattern, namely trespassing or breaking into the consular representative building to raise the Morning Star flag and raise banners that read "Free West Papua" and "TNI Out Stop Killing Papua" by several Australians who are sympathizers of Free Papua. In the first incident, the Indonesian government had given a diplomatic note, and the Australian government had punished the perpetrator, but the second incident occurred again.

The trespassing incident on January 6, 2017, was discovered to have been carried out by a 42-year-old man named Tyrone Gibb. During his breakthrough, he climbed the consulate fence and climbed to the balcony of the first floor of the Indonesian Consulate General in Melbourne, then raised the Morning Star separatist flag. During the action, he was arrested and charged after the Indonesian government criticized Australian authorities because almost a month after the protest was recorded and distributed via Facebook. Tyrone Gibb said at the trial that his action was a silent protest against Indonesia illegally occupying West Papua province.¹²

The results of the trial at the Melbourne Magistrates Court were that Tyrone Gibb was convicted and fined \$500 AUD for his crimes by Judge Tony Burns. Tyrone Gibb, at the trial, pleaded guilty to trespassing, but he emphasized that he would not pay the fine.¹³ Tyrone Gibb's statement above can be said to be that the motive for the breakthrough action was a form of protest against Indonesia for violating human rights (HAM) against the people of West Papua.

The issue of human rights violations due to the conflict in Papua has become an issue that has attracted national and international attention. The conflict in Papua has been going on for a long time, namely since the decolonization process of Papua from the Netherlands (Dutch New Guinea), the 1962 New York Agreement, the Determination of People's Opinion (Pepera) in 1969, until the policies of the New Order regime in 1967-1998.¹⁴ The events above became the background for the Papuan separatist movement to liberate itself from the territory of the Unitary Republic of Indonesia, namely the Free Papua Organization or *Organisasi Papua Merdeka* (OPM) movement.

The issue of the Indonesian government's human rights violations against West Papuans reached the international arena due to the involvement of the United Liberation Movement for West Papua (ULMWP) led by Benny Wenda. ULMWP is one of the OPM factions that functions to defend the political rights of West Papuan rebels to gain independence and become a sovereign state.¹⁵

ULMWP, in an effort to spread sympathy to foreign countries, uses international diplomacy strategies. This diplomatic method is an effective way to achieve success in gaining support from the international community, NGOs, and individuals abroad.¹⁶ Concrete evidence of the success of the ULMWP's influence in Australia is that there

¹²'Man Fined \$500 for West Papua Protest at Indonesian Consulate', <https://www.theage.com.au/national/victoria/man-fined-500-for-west-papua-protest-at-indonesian-consulate-20170323-gv4oca.html>.

¹³*Ibid.*

¹⁴Kluge, Emma, 'West Papua and the International History of Decolonization, 1961-69', *The International History Review* 6 (2020): 1155–72.

¹⁵Abdillah Satari Rahim and Fauzia Gustarina Cempaka Timur, "The Status of the United Liberation Movement for West Papua (ULMWP) in International Law on Indonesian Sovereignty," *Interdependence Journal of International Studies* 2, No. 1 (2021): 11–30, <https://doi.org/10.54144/ijis.v2i1.43>, n.d.

¹⁶Rahim and Cempaka Timur, 'The Status of the United Liberation Movement for West Papua (ULMWP) in International Law on Indonesian Sovereignty.', n.d.

is an NGO movement in Australia that supports an independent Papua. One of the NGOs in Australia is the Australia West Papua Association (AWPA).

The trespassing action against the Indonesian Consulate General building carried out by OPM sympathizers was a clear form of violation influenced by the AWPA action in Australia to support an independent Papua by flying the Morning Star flag. If the Trespassing action and the raising of the Morning Star flag at the Indonesian Consulate General in Melbourne is repeated, it could potentially threaten Indonesia's territorial integrity, so it is mandatory for Australia to implement Article 31 of the 1963 Vienna Convention concerning the protection of immunity rights and privileges of consular representative buildings.

The form of protection for foreign representative buildings that can be carried out by the receiving country can be done in 2 (two) ways, namely:¹⁷

- a. Protection in the foreign representative building environment (*Interna Rationae*)
This form of protection means that the foreign representative's building can be entered by local state officials or apparatus if there is an emergency and the state has strong evidence that the function of the foreign representative is, in fact, contrary to the provisions of the 1961 Vienna Convention and the 1963 Vienna Convention. Actions necessary to ensure the safety of humans whose lives are threatened. For example, when there was a breach of the Indonesian Consulate General in Melbourne, Australian security forces could immediately enter the area of the Indonesian Consulate General in Melbourne without asking permission from the head of the consular representative to immediately secure the perpetrators of the breach.
- b. Protection outside the foreign representative building environment
Protection outside the environment of the foreign representative building concerns situations that are outside the representative building but still around the representative building, such as road repairs, construction of underground trains, and demonstrations; these can reduce the honor and dignity of foreign representatives.

This is essentially in accordance with Article 31 of the 1963 Vienna Convention that the receiving country not only has an obligation to protect the foreign representative building but also the situation outside the foreign representative building environment. A form of protection that can be carried out by the receiving country against hostile interference is by providing additional security officers, taking into account the level of disturbance.

It is known that the protection provided by the Australian government for diplomatic and consular representative buildings is currently provided by the Australian Federal

¹⁷NMA Tambun, S Sutiarnoto, and A Arif, 'Breakthrough and Damage to the United States Consulate Building in Benghazi, Libya Seen from Diplomatic Law', *Journal of International Law*, 2013.

Police (AFP). Even though the Australian government has a "special duty" to take all possible measures to protect consular buildings, consular missions can contact the police quickly if they feel threatened. AFP carried out mobile patrols around the consular building. The method of security depends on the level of perceived threat and the AFP personnel available at the time. Such as security guards by the AFP, which patrols the United States Embassy 24 hours a day.¹⁸In the incident of the breach of the Indonesian Consulate General in Melbourne, a form of protection for the Indonesian Consulate General building that can be carried out by the recipient country is to increase the security of the Indonesian Consulate General in Melbourne by the AFP every December 1, which coincides with the anniversary of the Free Papua Organization (OPM) so that there is no repeat of the invasion and flag raising. Morning Star at the Indonesian Consulate General in Melbourne. Of course, in order to further guarantee legal certainty in carrying out this special duty, this can be done through a cooperation mechanism which is outlined in the form of an agreement to jointly provide good safeguards for the sending country, namely guarding and adding personnel in the area of the consular representative building and for the receiving country providing guard personnel. For outside the consular representative building. This is necessary considering that there have been repeated intrusions by Papuan liberation sympathizers in Australia.

4. Responsibility of the Receiving Country for trespassing actions at the Foreign Consular Representative Building

The representative office has been given the right of immunity to be inviolable and has the right to functional requirements where the consular representative is given immunity and privileges to carry out the widest possible functions without any interference or obstacles. The ¹⁹*Trespassing* incident is a manifestation of interference with the immunity of the consular building, which has resulted in the sending country, namely Australia, having to protect the consular building by applicable provisions, namely the 1963 Vienna Convention on Consular Relations. If the receiving country has been negligent or failed to protect the immunity of the consular representative, it must be held responsible or known as a state responsibility.

Based on international law, the Indonesian Consulate General in Melbourne has the rights regulated in the 1963 Vienna Convention based on its status as a "consular post," and the sending country is under a special duty to protect consular premises from any interference or damage and to prevent disturbances to consular posts that can lower his dignity. This refers to Article 31, paragraph (3) of the 1963 Vienna Convention, which reads, "...the receiving State under a special duty to take all appropriate steps to protect

¹⁸By Andrew Hiller LLB, "The Protection Of Diplomatic Personnel And Premises Commentary," Accessed November 17, 2023, https://Humanrights.Gov.Au/Sites/Default/Files/HRC_assembly_Hillier.Pdf, n.d.

¹⁹Setyo and Agis Ardiansyah Widagdo, *Immunity and Privileges in Diplomatic Relations According to the 1961 Vienna Convention* (Malang: UB Pers, 2020).

the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity". The term special duty is used to emphasize that the receiving state is obliged to take all actions beyond the steps normally taken by the state in relation to its duty to maintain public order.

Trespassing violations to the Indonesian Consulate General in Melbourne, although not carried out in the name of the state, have become the responsibility of the state. This is traditional in international law, although, in fact, the state acts towards individuals. State responsibility arises not from the individual but from an action of the state.

People who carry out trespassing are categorized as individuals but are not subject to international law and can be held accountable for their actions internationally and only in certain cases. Actions that can be prosecuted individually under international law include crimes against humanity, crimes against peace, crimes against war, war crimes; these individuals cannot take refuge in their country. However, the action in this case can be subjected to the law of the sending state.

Different from the individuals above, this group of intruders is not a subject of international law and cannot be prosecuted for their actions, so responsibility for violating the right to consular immunity is shifted to the responsibility of the state, namely Australia, whose status is the recipient country. Responsibility transferred to the state is called state responsibility.

Regarding state responsibility, it can be linked to theories based on fault theory. This theory is motivated by the existence of an element of error (*dolus*) or negligence (*culpa*) in the actions of state officials/agents. This theory determines the responsibility of a state for its actions if it is proven that there is an element of error or negligence. The incident that occurred at the Indonesian Consulate General in Melbourne is a form of "disturbance of the peace of the consular post," which needs to be prevented by Australia as a recipient country of the 1963 Vienna Convention.

State accountability in international law emerged based on the idea that no state can enjoy its rights without respecting the rights of other states; if someone violates them, then the state is obliged to be held accountable. Regarding when state responsibility arises in international law, it has been explained by the International Law Commission (ILC) Draft Article on Responsibility of States for Internationally Wrongful Acts 2001. Article 1 reads, "Every internationally wrongful act of State entails the international responsibility of that State. " The purpose of this Article is that every international wrongful act of a country gives rise to that country's responsibility.

A country that can be held responsible must basically fulfill the elements of failure or negligence in carrying out its obligations to protect the immunity rights of consular representatives. As explained in Article 2 ILC 2001 regarding the elements of a country that can be blamed internationally, as follows,

“There is an internationally wrongful act of State when conduct consisting of an action or omission: (a) is attributed to the State under international law, and (b) constitutes a breach of an international obligation of the State.”

This Article explains that the element of a country's internationally wrongful act is that it can be delegated to the country based on international law and is a violation of international obligations.

Based on Articles 1 and 2 of the ILC 2001, Australia's actions are considered a violation of international obligations, where Australia has failed to carry out international obligations, thereby giving rise to state responsibility. Australia violated international obligations by infiltrating the Indonesian Consulate General in Melbourne with a group of Free Papua sympathizers to raise the Morning Star flag. This has violated the provisions of Article 31 paragraph (3) of the 1963 Vienna Convention on Consular Relations. This Article states that the Australian government has a special obligation to protect the consulate area or the Indonesian Consulate General in Melbourne from all forms of interference that could damage its dignity. As is known, the consular building is inviolable. The Australian government was negligent in carrying out its obligations because the infiltration of the Indonesian Consulate General in Melbourne did not occur only once, namely on January 6, 2017, and December 1, 2020, meaning that the Australian government committed a second violation because it did not take precautions and provide security at the Indonesian Consulate General in Melbourne. Due to this action, the implementation of consular functions was disrupted. Australia's negligence caused losses for Indonesia as a sending country.

In fulfilling state responsibility, the Australian state must be able to provide redress for the violations it has committed. The following are forms of international responsibility based on the 2001 ILC Draft:

a. Cessation and non-repetition

The provision of cessation and non-repetition is regulated in Article 30, which reads, "The state responsible for the internationally wrongful act is under an obligation: (a) To cease that act if it is continuing; (b) To offer appropriate assurance and guarantees of non-repetition if circumstances so require." This Article explains that for internationally wrongful acts, a country is obliged to stop its actions; if it continues, then it is obliged to offer guarantees not to do it again if circumstances require it. The form of responsibility that can be carried out by Australia based on Article 30 letter b, namely by providing guarantees not to repeat violations of international obligations, namely the obligations of Article 31 paragraph (3), and proven by increasing security for consular posts and consular buildings so that trespassing incidents do not happen again. Which can disturb the peace of the consular post while carrying out consular functions in Australia and can reduce the dignity of the consular building.

b. Repair

The provision of repairs or reparations is regulated in Article 31 ILC 2001, which reads, "(a) The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act. (2) injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State". This Article explains that the state is obliged to provide full reparation for losses caused by internationally wrongful acts, namely losses for any damage, both material and moral. This reparation has the basic principles put forward in the Chorzow Factory case in 1928, namely the case between Iran and the United States. In this case, the International Court of Justice stated that "reparation must be as fast as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed." Through this repair, it is hoped that it can be returned to its original condition. Based on this Article, Australia is obliged to provide full reparation for immaterial losses, namely losses in the form of loss of trust in good relations between Indonesia and Australia. There was no material loss in the incident at the Indonesian Consulate General in Melbourne.

c. Forms of Reparation

The forms of repair or reparation are explained in Article 34 ILC 2001, which reads, "Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation, and satisfaction, either singly or in combination, in accordance with the provisions of this chapter." It can be said that the form of full reparation caused by internationally wrongful acts is in the form of restitution, compensation, and satisfaction. This Article is a further explanation of Article 31 ILC 2001 concerning reparation. Full reparation in the case of the incident at the Indonesian Consulate General in Melbourne can be done through satisfaction because the losses experienced by Indonesia as a sending state were not in the form of material losses. Reparations in the form of restitution and compensation, in this case, cannot be carried out because restitution and compensation, in the narrow sense, relate to the payment of material compensation for losses.

d. Satisfaction

Satisfaction, according to Article 37 of the ILC 2001, explains that the state is responsible for internationally wrongful acts; it is obliged to provide satisfaction caused by the act as long as it cannot be repaired by providing restitution or compensation, it can be given in the form of satisfaction.

In the case of the flag-raising incident at the Indonesian Consulate General in Melbourne, Australia, the form of reparation that can be carried out by Australia is in the form of satisfaction, considering that in this incident, there was no material loss for Indonesia as the sending state. The losses experienced were moral losses, where the

protection of the consular post and consular building was lost due to disturbances to the peace of the consular building by intruders who could undermine the dignity of the consular post and consular building.

The satisfaction that can be carried out by Australia as the receiving state is to officially apologize to Indonesia for its failure to implement Article 31 paragraph (3) and Article 59 of the 1963 Vienna Convention concerning Consular Relations, namely in providing protection and security for the Indonesian Consulate General in Melbourne. Australia can also express regret for the negligence of not taking steps to prevent the recurrence of trespassing carried out by intruders, such as taking firm action to punish trespassing perpetrators.

The form of responsibility effort that can be carried out by Australia in accordance with ILC 2001 above is to provide satisfaction, but in reality, the above responsibilities have not been implemented by Australia to Indonesia. Based on the principle of *pacta sunt servanda*, which has placed an obligation on treaty parties to comply with agreements in good faith, Australia must comply with Articles 31 and 59 of the 1963 Vienna Convention on Consular Relations. Responsibility efforts that Australia can provide apart from according to the 2001 ILC so that similar incidents do not happen again; namely, the Australian government must be responsible for taking legal action against provocateurs supporting the Free Papua separatist movement and ensuring that the investigation and investigation process against the perpetrators runs properly, as well as providing information- information related to the development of Papua to its people as a concrete form of support for Indonesia's full sovereignty over Papua.

5. Conclusion

Implementation of the Principle of Immunity in Consular Representative Buildings can be carried out through cooperation between receiving and sending countries. Based on the principle of extraterritorial jurisdiction, Indonesia should also prepare security personnel in the consular area, and the same thing is done by the receiving country to provide Australian security personnel to provide security outside the consular building as mandated by the 1963 Vienna Convention. This is deemed necessary because there are sympathizers who support independence.

Papua in Australia has carried out disturbances that have resulted in a decline in the dignity of the Indonesian state. The responsibility of the receiving country for disturbances committed by its citizens at the Foreign Consular Representative Building is based on the case of the Indonesian Consulate General in Melbourne. Therefore, Australia should make an official apology to Indonesia supported by the making of an

agreement to provide special personnel to guard Indonesia's extraterritorial territory in Australia.

References

Book

Aka, Syahmin. *Diplomatic Law An Introduction*. Bandung: Armiko, 1998.

Rahim and Cempaka Timur, *'The Status of the United Liberation Movement for West Papua (ULMWP) in International Law on Indonesian Sovereignty*.

Sefriana. *Hukum Internasional: Suatu Pengantar*. Rajawali Pers, 2018.

Setyo and Agis Ardhiansyah Widagdo. *Immunity and Privileges in Diplomatic Relations According to the 1961 Vienna Convention*. Malang: UB Pers, 2020.

Journal

Abdillah Satari Rahim and Fauzia Gustarina Cempaka Timur, "The Status of the United Liberation Movement for West Papua (ULMWP) in International Law on Indonesian Sovereignty," *Interdependence Journal of International Studies* 2, No. 1 (2021): 11–30, <https://doi.org/10.54144/ijis.V2i1.43>., n.d.

By Andrew Hiller LLB, "The Protection Of Diplomatic Personnel And Premises Commentary," Accessed November 17, 2023, https://humanrights.gov.au/sites/default/files/HRC_assembly_Hillier.pdf., n.d.

Christianty NF Tambaritji. 'Legal Aspects Of The Position Of Consular Representatives In The Implementation Of Cooperative Relations Between Countries According To The 1963 Vienna Convention'. *Lex Et Societatis VII* 3 (2019).

Deicy Natalia Karamoy. 'Diplomatic Immunities and Privileges Under International Law'. *Lex Et Societatis VI* 5 (2018): 8–12.

'DPR-RI, "Parliamentary Bulletin" (Jakarta, 2017), 3–4.' 2017.

Kluge, Emma. 'West Papua and the International History of Decolonization, 1961-69'. *The International History Review* 6 (2020): 1155–72.

Marinković, Nemanja. 'International-Legal Regulation as a Determinant for Measures and Procedures of the Competent State Authorities towards Diplomatic-Consular Representatives'. *NBP–Nauka, Bezbednost* 3, no. Policija (2019): 73–86.

Muhammad Adam Firdaus. 'ANALYSIS OF DIPLOMATIC LAW IN LIFTING THE HONORARY CONSUL OF THE STATE OF INDONESIA TO PALESTINE'. *Jurnal Pendidikan Kewarganegaraan Undiksha* 10, no. 2 (24 October 2022): 341–52. <https://doi.org/10.23887/jpku.v10i2.47078>.

- NMA Tambun, S Sutiarnoto, and A Arif. 'Breakthrough and Damage to the United States Consulate Building in Benghazi, Libya Seen from Diplomatic Law'. *Journal of International Law*, 2013.
- Pustika, Anna Anindita Nur. 'Arti Penting Mandatory Access Consular Notification dalam Hubungan Konsuler'. *Jurnal Hukum Lex Generalis* 3, no. 1 (1 January 2022): 17–31. <https://doi.org/10.56370/jhlg.v3i1.168>.
- Putu Agus Harry Sanjaya, Dewa Gede Sudika Mangku, Ni Putu Rai Yuliantini. 'Legal Protection of Diplomatic Representative Buildings in the Perspective of the 1961 Vienna Convention (Case Study of Bomb Explosions at the Embassy of the Republic of Indonesia (KBRI) Carried Out by Saudi Arabia in Yemen)'. ", *Ganeshha University of Education Yustisia Community e-Journa* 2, no. 1 (2019).

Website

- Post, The Jakarta. 'Indonesia Condemns Papuan Flag Incident in Melbourne - National'. The Jakarta Post. <https://www.thejakartapost.com/news/2017/01/07/indonesia-condemns-papuan-flag-incident-in-melbourne.html>.
- Man Fined \$500 for West Papua Protest at Indonesian Consulate. <https://www.theage.com.au/national/victoria/man-fined-500-for-west-papua-protest-at-indonesian-consulate-20170323-gv4oca.html>.
- DPR-RI, "Parliamentary Bulletin" (Jakarta, 2017), 3–4.' 2017.