

**JLPH:**
Journal of Law, Politic
and Humanities<https://dinastires.org/JLPH>dinasti.info@gmail.com

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E-ISSN: 2962-2816
P-ISSN: 2747-1985DOI: <https://doi.org/10.38035/jlph.v5i6>
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Indonesia's Legal Remedies For Violation Of Diplomatic Immunity For Interception of The Indonesian Embassy In Yangon

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Abstract: This study analyzes Indonesia's legal efforts against the violation of diplomatic immunity due to the wiretapping of the Embassy of the Republic of Indonesia (KBRI) in Yangon, Myanmar in June 2004. The incident violated Article 22 and Article 27 of the 1961 Vienna Convention, as eavesdropping devices were found in the Ambassador's office and diplomatic communication cables, which undermined the principles of inviolability and freedom of communication. This study uses a descriptive qualitative research method used with a juridical-normative approach based on literature studies from primary, secondary, and tertiary legal materials. The findings show that Myanmar has neglected to carry out its diplomatic protection obligations, so the recipient country is obliged to be held internationally responsible through compensation, apologies, or improvement of security procedures in accordance with the provisions of the International Law Commission Draft Articles on State Responsibility and the Principle of Responsiveness. The Indonesian State chooses a settlement through peaceful diplomatic channels, including formal negotiations and protests, in accordance with the spirit of ASEAN and Article 33 of the UN Charter. However, its effectiveness depends on Myanmar's good faith to improve the protection system of diplomatic facilities and provide assurance that similar incidents do not recur. This study confirms the importance of strengthening international legal mechanisms in maintaining the integrity of bilateral relations and the reputation of global diplomacy.

Keyword: Diplomatic, State Accountability, International Legal Diplomacy.

INTRODUCTION

Currently, the ability of a country to establish relations with other countries has a very important role on the international stage. This shows that the country is able to maintain the integrity of its territory. In addition, this ability also facilitates the achievement of equality of position among countries and reflects the independence and sovereignty owned by the country concerned.

To start diplomatic relations, the two countries must first make official contact and reach a mutual consent to open or exchange diplomatic or consular representations. This agreement reflects a common goal to strengthen friendship and cooperation in various political, economic, cultural, and other fields. And it is based on the firm agreement of both parties. In addition, the relationship to be built must be fully subject to the principles of international law, in particular the Principle of reciprocity, where the rights and treatment given by one party will be exchanged equally by the other.¹

Diplomatic relations between countries are based on the principles of immunity and diplomatic protection, so that official representatives can carry out their duties effectively without interference. The main guideline used is the 1961 Vienna Convention, which establishes the rights and obligations of sending and receiving countries, especially in terms of the security of diplomatic missions and their facilities, including embassy buildings and official means of communication so that communications are created safely and embassy spaces remain protected.

In the wiretapping incident that occurred in Yangon, Myanmar, a joint security team from the Government of the Republic of Indonesia consisting of elements of the State Cipher Institute (Lemsaneg), the State Intelligence Agency (BIN), and the Ministry of Foreign Affairs, conducted a thorough inspection at the Embassy of the Republic of Indonesia (KBRI) office in Yangon on June 24, 2004. The results of the investigation revealed that the Myanmar military junta had illegally wiretapped all activities and communications of Indonesian diplomats there. Eavesdropping devices are known to be installed on the wall of the Indonesian Ambassador's office to Myanmar, which resulted in a decrease in the frequency of telephone communication from 50 MHz to 30.1 MHz.²

This act of wiretapping reflects the world's understanding that information is power, whoever controls the information, will have control over the dynamics of the world. At least, the mastery of information provides an opportunity for a country to compete in an increasingly competitive global arena. The eavesdropping case that occurred at the Indonesian Embassy office in Yangon shows that there are weaknesses in the security system within diplomatic representatives. In fact, it is the responsibility of the Myanmar government as the recipient country to ensure the security and protection of the diplomatic representative office of the Republic of Indonesia, but this obligation does not seem to be carried out optimally.³

Relations between Indonesia and Myanmar have been very close. However, the actions taken by the Government of Myanmar are considered inappropriate and violate the norms of decency and ethics in diplomatic relations. In addition, Myanmar has also violated the rights of immunity as well as diplomatic privileges guaranteed in the 1961 Vienna Convention. The act also undermines the rights of diplomatic immunity and privileges protected in the Vienna Conventions, threatens the safety of diplomatic personnel and harms trust in state interactions. As a result, Myanmar could be considered to have failed to meet its obligations as a recipient country and be obliged to provide responsibility, either in the form of a formal

¹ Ahmad Dewana and Akbar Putra, Legal Accountability for the Actions of Diplomatic Agents from Sending Countries Who Carry Out Espionage in the Receiving Country, *Journal of Legal Treatises*, Vol.17, No. 1, Year 2021, p. 53.

² Dewa Mangku, Violation of the Right to Diplomatic Immunity (Case Study of the Interception of the Embassy of the Republic of Indonesia (KBRI) in Yangon Myanmar Based on the 1961 Vienna Convention), *Journal of Perspective*, Vol. 15, No.3, Year 2010, pp. 228-229.

³ Ibid

apology, improvements to diplomatic protection procedures, or compensation in accordance with international legal demands.⁴

The case of wiretapping at the Indonesian Embassy in Yangon in June 2004 is a clear reflection of how vital the principles of immunity and inviolability are in international diplomacy, as guaranteed by the 1961 Vienna Convention. This incident not only disrupted the security of diplomatic communications and hurt bilateral trust, but also highlighted the importance of Indonesia and Myanmar's seriousness in upholding the principles of mutual consent and reciprocity. In order for relations between the two countries to be restored and remain strong, Myanmar must take concrete steps, such as formally apologizing, increasing protections for foreign diplomatic facilities, and providing appropriate compensation. Furthermore, this incident should serve as a momentum to strengthen the international legal mechanism and ASEAN's role in maintaining diplomatic security, as well as ensure that the values of sovereignty, independence, and equality between countries continue to be respected and protected.

METHOD

Data is analyzed with a descriptive qualitative approach, descriptive qualitative is an approach that produces data in descriptive form in the form of words, writings, and observable behaviors with the aim of exploring a comprehensive understanding of the context as a whole.⁵ This study uses the identification of patterns, legal principles, and state practices in responding to violations of diplomatic rights. The findings of the analysis are then used to answer the formulation of the problem and formulate recommendations for solutions that are appropriate and accountable according to the international legal framework.

RESULTS AND DISCUSSION

Diplomatic relations built on the basis of the 1961 Vienna Convention reflect a commitment to international law in which each country has the right to place and receive diplomatic representatives to safeguard national interests. Embassy buildings, staff, documents, and supporting facilities are fully protected by conventions that have been ratified almost globally by 193 countries. But unfortunately, in practice, there are still violations of this basic principle, one of which is the incident of wiretapping of the Indonesian Embassy in Yangon (2004), which injures the principles of inviolability and freedom of communication as expressly regulated in the 1961 Vienna Convention.

Diplomatic relations between countries are built on the basis of sovereignty and equality, which can be seen from the recognition of diplomatic immunity to protect the duties of diplomatic representatives. This immunity is provided for in the 1961 Vienna Convention, which stipulates that diplomatic missions must be free from interference, including interception of communications. The wiretapping incident at the Indonesian Embassy in Yangon is an example of a violation of this principle, disrupting bilateral relations and undermining the integrity of international diplomacy.

Article 22 paragraph 1 of the Vienna Convention states that the mission site cannot be challenged. Agents of the receiving State may not enter them, except with the approval of the head of mission. The interception of the communications of the Indonesian Embassy in Yangon by the Myanmar authorities is a clear violation of the provisions of Article 22 paragraph (1) of the 1961 Vienna Convention. This incident demonstrates Myanmar's failure to comply with its international and adequate legal obligations as the basis for the recipient

⁴ Syakhila Maulidya et al, Violation of the Right to Immunity and Inviolability to Freedom of Communication (Case Study of the Interception of the Embassy of the Republic of Indonesia in Myanmar), Vol. 5, No.2, Year 2016, pp. 3-4.

⁵ Sulistyawati, *Textbook of Qualitative Research Methods*, (Yogyakarta: K-Media: 2022), p. 29.

country's responsibilities, which include demands for a formal apology, compensation, and improved security procedures.

Diplomats serving in other countries have a need for special protection. There are several main reasons why the safety and security aspects of diplomats are a priority, namely:

1. Diplomats are often the target of a variety of potential threats, such as acts of terror, espionage, or protest demonstrations. Therefore, the presence of an adequate security system is essential for them to work without interruption.
2. The safety of diplomats is also a tool to defend the sovereignty of a country. Attacks on diplomats are often seen as a form of offense against the country they represent.
3. If a diplomat encounters a dangerous situation or unsafe conditions in the country of deployment, it has the potential to cause tensions or even rifts in bilateral relations.
4. Given that diplomats typically have access to important and confidential information related to their country's national interests, keeping them safe means protecting sensitive data from potential leaks or misuse.⁶

Therefore, it is important for the recipient countries to immediately improve bilateral relations through official measures. A formal apology from the Myanmar government will be a form of acknowledgment of the mistakes that have been made and a form of good faith in strengthening diplomatic trust. Furthermore, the provision of adequate compensation and the improvement of security standards and procedures within diplomatic representatives, such as the Indonesian Embassy in Yangon, are concrete steps in preventing the recurrence of such violations. Collaborative efforts between the two countries in strengthening communication protection mechanisms and diplomatic facilities will strengthen the sovereignty and principle of equality mandated in the 1961 Vienna Convention, while maintaining the reputation and stability of international diplomacy.

In June 2004, a joint team from the State Cryptography Institute (Lemsaneg), the State Intelligence Agency (BIN), and the Ministry of Foreign Affairs conducted a routine audit of the Indonesian Embassy's communication system in Yangon to ensure the security of diplomatic channels. However, their findings were surprising: there was a drastic decrease in communication frequencies and significant changes in electrical current, both of which were strong indicators of the presence of hidden eavesdropping devices. This fact underscores the importance of periodic audits and at the same time exposes serious violations of the principles of inviolability and freedom of communication guaranteed by the 1961 Vienna Convention.

After conducting an in-depth investigation, the audit team managed to find a tapping device that was hidden inside the walls of the Ambassador's office and on the telecommunication cables in the Defense Attaché's office. The device is designed to capture voice signals and data from diplomatic communication lines and then retransmit them through certain frequency waves. This method reflects an advanced eavesdropping technique known as hard bugging. This technique not only allows the eavesdropping device to operate stealthily and continuously, but it is also difficult to detect without the use of special devices such as radio frequency detectors according to the characteristics of bugs that have small microphones and hidden radio wave transmitters.

In the midst of this situation, Indonesia emphasized that this disclosure is not only a violation of diplomatic privacy, but also tests the commitment of the recipient country in implementing the principles of international law. In accordance with the provisions of Article 9 of the 1961 Vienna Convention, the receiving state has the authority to declare foreign

⁶ Abraham Naham, the responsibility of the sending and receiving state for the safety and security of diplomats according to the 1961 Vienna Convention, *Journal of the Faculty of Law UNSRAT Lex Privatum*, Vol.14, No.1, Year 2024, p. 6.

diplomats persona non grata and even severe diplomatic relations if serious violations are found, although this step is often chosen only as a last resort. Indonesia emphasized that this case is a test for the mechanism of accountability between countries, where corrective actions such as apologies, compensation, or guarantees not to repeat similar acts are crucial in upholding the credibility of the diplomatic order.

Indonesia chose to pursue the path of post-incident peaceful diplomacy, without taking confrontational steps such as the withdrawal of ambassadors or the termination of official relations, as a form of commitment to the peaceful settlement of disputes in accordance with ASEAN directives and international law. Under the principle of international state responsibility, if the receiving country feels aggrieved by the actions of diplomatic officials, they have the right to demand accountability from the sending country, either in the form of a formal apology or a guarantee that similar events will not be repeated. In addition, if the action causes material damage, the recipient country can seek compensation on the principle of restitution or compensatio, although the restoration of bilateral relations usually takes a considerable amount of time and can have an impact on both parties.⁷

In June 2004, the Myanmar government responded to the wiretapping allegations with a defensive stance, denying categorically that it had deliberately carried out the practice. They reasoned that the detected disruption was most likely due to poor communication infrastructure in Yangon, not to espionage. Even so, until now there is no concrete evidence to show any admission of wrongdoing or Myanmar's intention to take reparative action against the incident.

According to international law, the recipient state does not have the authority to prosecute or punish diplomats under any circumstances. The only way to limit diplomatic immunity is through a waiver request from *the* sending country, which is done before the diplomat is declared persona non grata. However, even if the revocation is legal, responsibility for the violation of the rights and immunities of diplomats remains with the recipient country regardless of the cause, whether due to negligence or willful act. In this case, the recipient country is obliged to provide full protection and responsibility for diplomatic missions located in its territory.⁸

Violations of diplomatic immunity rights such as interception of communications, this incident underscores the importance of implementing protective technologies such as communication encryption and periodic security audits, as well as early detection protocols so that diplomatic immunity rights are no longer easily undermined by state intervention.

Cases like this should be a trigger for the revision and strengthening of Indonesia's national legal instruments related to the protection of diplomatic immunity, to be in line with international standards as enshrined in the 1961 Vienna Convention. The Government of Indonesia, together with friendly countries, has the potential to take diplomatic initiatives in international forums to encourage the adoption of additional instruments that affirm and impose strict sanctions on violations of diplomatic immunity, thereby creating legal clarity and a deterrent effect for all.

An important lesson from this incident is that regular surveillance and cross-sector security audits are of paramount importance. Starting from cybersecurity, physical infrastructure audits, to active intelligence. Initiatives such as the establishment of a Security Incident Response Team (CSIRT) in each ministry/institution and the implementation of periodic audits are needed as early detection and mitigation of threats as early as possible. With a multidisciplinary coordination system, rapid responses to violations of diplomatic

⁷ Helena Rindengan, Juridical Studies of Diplomatic Immunity and Privileges According to the 1961 Vienna Convention, *Journal of Lex et Societatis*, Vol.7, No.2, Year 2019, p. 109.

⁸ Windy Lasut, Dating Diplomatic Immunity in Recipient States According to the 1961 Vienna Convention, *Journal of Lex Crimen*, Vol.5, No.4, Year 2016, p. 89.

rights can be carried out effectively and consistently, providing a deterrent effect to recipient countries that neglect their obligations and strengthening the integrity of Indonesian diplomacy in the eyes of the international community.

Threats to diplomatic security do not only come from outside, but can also start from internal factors such as a lack of vigilance or vigilance of embassy staff. It is therefore very important to establish a systematic internal reporting mechanism, equipped with legal protections. In the diplomatic environment, it is necessary to develop a safe and confidential reporting system, complete with a non-discriminatory policy and guarantees of the confidentiality of the identity of the complainant. This will help create a credible work environment and prevent internal violations that can undermine the trust of the sending country as well as the destination.

CONCLUSION

The incident of wiretapping of the Indonesian Embassy's communication channels in Yangon by Myanmar authorities is a clear violation of diplomatic immunity protected by Article 22 and Article 27 of the 1961 Vienna Convention, ratified by Indonesia, under which the recipient country is obliged to guarantee the inviolability of diplomatic facilities and freedom of communication. The Indonesian government immediately responded by sending a joint team from the Ministry of Foreign Affairs, Lemsaneg, and BIN for technical investigations, submission of diplomatic protests, and direct diplomacy with the Myanmar side as part of the peaceful settlement and restoration of bilateral trust. This legal effort sends a strong signal that violations of diplomatic immunity can be effectively addressed through a combination of normative international and diplomatic legal approaches, while serving as a reminder of the importance of security policy updates and protective protocols in foreign diplomatic representations.

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