

## **Review of International Law Against Diplomatic Immunity Consulate General Who Committed A Violation of Law In The Recipient Country**

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### **Abstract**

Diplomatic immunity granted to an official such as a consular official who is granted privileges and immunities regulated by the 1963 Vienna Convention as the basis of international law where the receiving State is obliged to guarantee and protect the privileges and immunities of consular officials. The principle of reciprocity which is one of the bases for the granting of immunity between representatives of the two countries in each recipient country makes the legal system of diplomatic representation more concrete and good. Based on the mechanism of international law, the US has committed a violation of international law, namely not protecting or complying with the provisions regarding diplomatic representatives who have immunity rights. Even if an official commits no crime or violation, the person who has the authority should ask permission from the country of origin of the diplomatic representative, this is useful for maintaining good relations between countries and between their citizens. Resolving violations by respecting representatives can conclude that the country has good faith in maintaining relations. The highest authority lies with the sending country which has full sovereignty over its representatives in each country.

**Keywords:** International Law Review, Diplomatic Immunity, Consulate General, Violation of Laws

### **Abstrak**

Kekebalan diplomatik yang diberikan kepada seseorang pejabat seperti pejabat konsuler yang diberikan Hak istimewa dan kekebalan yang diatur oleh Konvensi Wina 1963 sebagai dasar hukum internasional dimana Negara penerima berkewajiban untuk menjamin dan melindungi hak istimewa dan kekebalan pejabat konsuler tersebut. Asas resiprositas yang menjadi salah

satu dasar diberikannya kekebalan antar perwakilan kedua negara di masing-masing negara penerima menjadikan sistem hukum perwakilan diplomatik menjadi lebih konkrit dan baik. Berdasarkan mekanisme hukum internasional, pihak AS telah melakukan tindakan pelanggaran terhadap hukum internasional yakni tidak melindungi atau mentaati ketentuan-ketentuan mengenai perwakilan diplomatik yang memiliki hak kekebalan. Kendaitupun seorang pejabat melakukan tidak pidana maupun pelanggaran seharusnya orang yang memiliki otoritas meminta izin kepada negara asal perwakilan diplomatik tersebut, hal ini berguna untuk menjaga hubungan baik antar negara dan antar warga negaranya. Penyelesaian pelanggaran dengan menghormati perwakilan dapat menjadi kesimpulan bahwa negara tersebut mempunyai itikad baik dalam menjaga hubungan. Otoritas tertinggi ada pada negara pengirim yang memiliki kedaulatan secara penuh terhadap perwakilannya di setiap negara.

**Kata Kunci:** Sebutkan hanya konsep spesifik [kata atau frasa], 3-5 konsep, kata yang benar-benar konseptual, dan tidak terlalu umum.

## A. Pendahuluan

In order to strengthen foreign relations, each country will send its representatives to that country. People who represent their country are called diplomats and carry out diplomatic missions. Diplomats as representatives of the sending state in the receiving state have very heavy duties and missions, and are often said to be carrying out a sacred mission (*sancti habentur legati*). To support smoothness and efficiency in carrying out their missions, diplomatic agents as a whole are given immunity and privileges. Immunity and privileges are not only granted to heads of missions such as Ambassadors, Envoys or Charge D'affaires, but also to members of their families who live with them, including other diplomats who are members of the delegation (such as Counsellors, secretaries, bosses and so on) and (sometimes in very rare circumstances) by administrative staff from representatives and other auxiliary staff (cooks, drivers, waiters, guards, and others similar).<sup>1</sup>

Diplomacy as a method of communication between various parties, including negotiations between recognized agents, is an ancient institution and the provisions of international law governing its manifestation are the result of centuries of state practice.<sup>2</sup> The privileges and immunities relating to diplomatic personnel of various kinds grew partly as a consequence of the impunity of law and the independence and equality of states, and partly as an essential requirement of the international system.

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<sup>1</sup> Gutteridge In Sumaryo Suryokusumo, *Diplomatic Law Theory and cases*, (Bandung Alumni Publishers, 1995), hlm. 52

<sup>2</sup> Malcolm N. Shaw QC, Translation of Derta Sri Widowatie, Imam Baehaqi and M. Khosim, *International Law* (Bandung: Nusa Media Publishers, 2013), hlm. 724-5

States must negotiate and consult with each other and with international organizations and to do so it is necessary diplomatic staff. Because these people represent their countries in various ways, they thus enjoy the legal principle of state sovereignty. this is also for the practical good of all.

The existence of immunity and protection by the state functions to ensure that diplomatic representatives or foreign missions in a country can carry out their mission duties freely and safely, and as needed in order to: developing friendly relations between countries, without considering their different constitutional and social systems and Not for individual interests but to ensure the efficient implementation of the duties of diplomatic officials, especially in the duties of the country they represent.<sup>3</sup>

By having state representation in a country, state relations will become good and harmonious. Harmony is one of the foundations for implementing relations between countries, especially in building trust between countries. Providing immunity and privileges also constitutes the receiving country's trust in the sending country, because in international relations the principle of reciprocity is still a determinant in making foreign policies regarding envoys or diplomatic representatives. The immunities and privileges obtained by diplomatic representatives are guaranteed by international law. In terms of consular diplomatic representation, it is in accordance with the 1963 Vienna Convention. The immunity given to diplomatic representatives is immunity from the laws of the country in the receiving country even if the diplomatic representative violates the law.

Due to relations with other countries, people are needed who will act as representatives of a country who are stationed in the territory of another country to be able to act as representatives of the country and to serve their citizens who are in other countries. These people are diplomats and consular officers stationed in various regions in other countries. Specifically in the fields of trade, economics, culture and science handled by consular officers. They have the duty to represent their country and serve the citizens of their territory. In terms of acting as representatives of a country, consular officers certainly receive special services in carrying out their duties. Not only are privileges granted, but consular officials also enjoy legal immunity.

The principle of reciprocity which is one of the bases for granting immunity between representatives of the two countries in each recipient country makes the legal system of diplomatic representation more concrete and better, this is because if a country wants to take retaliatory action against the country receiving its representatives who commit arbitrary actions. authority to its representatives can be responded to directly without having to follow the complexity of international relations administration. For example, the case of India's diplomatic representative who was detained in the US has become a sharp focus for India because it has

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<sup>3</sup> Sumaryo Suryokusumo, *Ibid*, hlm.55

degraded the country by carrying out actions that are inappropriate for a diplomatic representative.

## **B. Definition and regulation of diplomatic law**

Diplomatic Law, is traditionally used to refer to norms in International Law which regulate the position and function of diplomatic missions determined by States that have established diplomatic relations.<sup>4</sup> One of the known sources of Diplomatic Law is International Agreements, in this case the 1961 Vienna Convention on Diplomatic Relations. Article 3 of the convention states that one of the duties of diplomatic representatives is to collect information on the condition of the receiving State accurately and in a legal manner<sup>7</sup> to then report it to the sending State.<sup>5</sup> Making reports about the situation is also said to be the most basic obligation of diplomatic representatives to the sending country. As long as the report is obtained in a legal way, then reports resulting from spying or espionage practices will be considered as information obtained in an illegal way according to International Law and Customs.<sup>6</sup>

Diplomatic law is part of international law that is concrete and definite, therefore the sources of international law are also part of the sources of diplomatic law. Discussing the source of diplomatic law cannot be separated from the provisions of article 38 (1) of the ICJ statute which has been recognized by international legal experts as a source of international law in the formal sense which reads as follows

*" for the international court whose function is to decide cases submitted to it in accordance with international law, will apply: international agreements, both general and specific, which are expressly regulated and recognized by the party states, proven international customs are common practices accepted as law, principles of general law recognized by civilized nations, and in accordance with the provisions of article 59, court decisions and the teachings of international legal experts from various nations, as additional sources for establishing legal rules"*

In relation to sources of law in international agreements, both general and specific, the specific sources of law in the field of diplomatic and consular relations include, among others, the following forms:

1. The final act of the congress of vienna (1815) on diplomatic ranks.
2. Vienna convention on diplomatic relations and optional protocols (1961), along with:
  - a) Vienna convention on diplomatic relations;
  - b) Optional protocol concerning acquisition of nationality;

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<sup>4</sup> By I. Gst Ngr Hady Purnama Putera, et al, Review of Diplomatic Law Concerning Dispute Settlement of Espionage Practices Carried Out Through Diplomatic Missions Outside the Use of Persona Non-Grata, p.3 quoted from L. Dembinski, *"The Modern Law of Diplomacy"*, (Netherlands: Martinus Nijhoff Publishers, 1988) hlm. 1

<sup>5</sup> Syahmin, Ak, 2008, Diplomatic Law in the Framework of Analytical Studies, PT RajaGrafindo Persada, Jakarta, p.93

<sup>6</sup> Ibid

- c) Optional protocol concerning the mandatory settlement of disputes.
3. Vienna convention on consular relations and optional protocol (1963), along with:
  - a) Vienna convention on diplomatic relations;
  - b) Optional protocol concerning acquisition of nationality;
  - c) Optional protocol concerning the mandatory settlement of disputes.
4. Convention on special mission and optional protocol (1969) along with:
  - a) Convention on special mission;
  - b) Optional protocol concerning the mandatory settlement of disputes
5. Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (1973)
6. Vienna convention on the representation of states in their relations with international organization of a universal character (1975)

### **C. Diplomatic Immunity**

Regarding Personal:

1. Article 29 of the Vienna Convention regarding non-detention or arrest;
2. Article 31 paragraph (1) concerns immunity from criminal, civil and administrative jurisdiction of the country where they serve;
3. Article 31 paragraph (3) states that no execution can be carried out against them;
4. Article 40 of the convention provides immunity where a diplomatic agent is in a transit area between his country of origin and a third country where he will be stationed.

Relating to embassy buildings and property:

1. Article 22 of the convention specifically states that the envoy's office cannot be disturbed and that agents of the receiving state are not permitted to enter without permission;
2. Article 23 of the convention regarding tax immunity;
3. Article 24 of the convention regarding ambassadors' archives and documents cannot be disturbed at any time and wherever they are;
4. Article 45 (a) states that after the termination of diplomatic relations, the receiving country must respect and protect the envoy's office.

Relating to diplomat bags:

1. Article 27 regulates that the receiving country permits and protects free communication on behalf of the envoy for all state purposes;
2. Article 27 paragraphs (3) and (4) relate to diplomats' bags, and state that these bags must not be opened or detained.

### **D. Definition and consular arrangements**

Article 2 paragraph 1 of the Vienna Convention on Consular Relations clearly states that the opening of consular relations between States is carried out on the basis of mutual agreement. If article 2 paragraph 1 concerns the opening of consular relations, article 4 paragraph 1 of the Vienna Convention refers to the opening of consular representation, namely that a consular representation may be opened in the territory of the receiving State only with the consent of that State. This provision reminds us that the provisions that apply in diplomatic relations are two different things and each of which must first obtain agreement from both countries.

However, article 2 paragraph 2 of the Convention on Consular Relations also adds that approval given to the opening of diplomatic relations between two States means approval for the opening of consular relations, unless stated otherwise. This means that for countries that already have diplomatic relations and wish to open consular representation, all that is needed is the approval of the local country to open consular representation and no longer approval for opening consular relations.

The Vienna Convention of 1963 is a convention governing consular relations which has been ratified and acceded to by 117 countries, 40 of which have become parties to the Optional Protocol concerning the obligation to resolve disputes. This Convention consists of 79 Articles and is grouped into five Chapters, namely:

1. The first chapter (Articles 2 – 27) includes, among other things, methods of conducting consular relations including the duties of consuls;
2. The second chapter (Articles 28-57) relates to the immunities and privileges granted not only to consular representatives but also to career consular officials and other members of consular missions;
3. The third chapter (Articles 58-67) specifically provides provisions regarding the institution of honorary consuls including their offices. The provisions in this third chapter also contain provisions regarding immunities and privileges granted to honorary consuls and their offices;
4. The fourth chapter (Articles 69-73) contains general provisions, including regarding the implementation of consular duties by diplomatic representatives, the relationship of this convention with other international agreements and so on;
5. The fifth chapter is about final provisions such as signing, ratification and accession, entry into force and so on.

#### **E. Consular immunity**

On April 24 1963, The Vienna Convention on Consular Relations was born, which was equipped with the Optional Protocol Concerning Acquisition of Nationality and The Optional Protocol Concerning the Compulsory Settlement of Disputes. Indonesia itself has ratified the convention through Law Number 1 of 1982 on January 25 1982.

As people assigned as representatives of the State, consular officials have several functions regulated in the 1963 Vienna Convention, namely:<sup>7</sup>

1. Protect the interests of the sending country and the interests of citizens in the receiving country;
2. Advancing trade, economic, cultural and scientific relations;
3. Observe the conditions and developments in the fields of trade, economy, culture and science in the recipient country;
4. Issue passports and travel documents to citizens of the sending country, visas or other documents and assist citizens of the sending country;
5. Acting as a notary and civil registry official;
6. Exercising the right to supervise and inspect ships of the sending country;
7. Other functions that are not prohibited by the laws and regulations of the recipient country.

So, in carrying out various functions and duties where the consuls act as representatives of the State, they are given the best service from the receiving State and are also given several privileges and immunities that only consular officials have. The privileges and immunities of consular officials as stated in the 1963 Vienna Convention are as follows:

1. Immunity of consular offices;
2. Communication device immunity and communication immunity;
3. Personal immunity of consular officials;
4. Fiscal immunity;
5. Exemption from paying personal taxes;
6. Import duty exemption.

#### **F. Case Position<sup>8</sup>**

Dr. Devyani Khobragade is a woman born in the city of Tarapur in the region of Maharashtra, an Indian national. Khobragade joined the Indian Ministry of Foreign Affairs in 1999. Then in September 2012 he served as Deputy to the Indian Consulate General in New York, United States. When he served in the US, he received international attention because of a case of falsifying residence permit (visa) application information, also known as visa fraud. in the US belonging to his assistant, Sangeeta Richard, who was filed in November 2012.

Therefore, on December 11, 2013, Khobragade was arrested and questioned by US security authorities based on reports from Sangeeta Richard through the Indian community in New York on accusations that Khobragade employed workers (Sangeeta Richard) below the minimum wage set by US law. This case began on October 15 2012, Khobragade submitted an online visa application to the US

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<sup>7</sup> Kendis G Runtunuwu, 2013, Immunity Privileges of Consular Officials, Sam Ratulangi Faculty of Law, p.4

<sup>8</sup> Trisuharto Clinton, 2014, Detention of Indian Consular Representative in the United States "Devyani Kho Bragade", Faculty of Law, Diponegoro University.

Department of State's Consular Electronic Application Center website with an A-3 visa for Sangeeta Richard. In the visa application there is information that Sangeeta Richard's monthly income is US\$ 4,500 (Four Thousand Five Hundred US Dollars) per month or approximately US\$ 10 (Ten US Dollars) per hour, but in reality Khobragade only earns less than US\$ 3 (Three US Dollars) per hour.

Khobragade's actions in paying workers not in accordance with his statement on his workers' visas got him into trouble. The minimum wage standard for workers in the US is US\$ 9.75 (Nine Dollars Seventy Five US Cents) per hour, which made Khobragade enter a manipulated figure of US\$ 10 (Ten Dollars) per hour so that Sangeeta could obtain an A-3 visa. On the other hand, Khobragade also violated Title 28, United States Code, section 1746 which regulates visa fraud intentionally and under oath, because the information regarding Sangeeta Richard's income on her visa was fictitious. On 21 June 2013, Khobragade left her children in the care of Sangeeta Richard for an assignment outside the city. However, when Khobragade returned from out of town on June 23 2013, his housekeeper disappeared from his house. Then on June 25 2013, Khobragade filed a missing person's report with the NYPD (New York Police Department), but then the NYPD closed the missing person's case because the person in question had not been found. It turns out that Sangeeta Richard, after leaving the Khobragade residence, lived with the Indian community in New York.

Then on June 30 2013, a non-profit organization called Safe Horizon which works in the field of anti-human trafficking took Sangeeta Richard to the US Department of State on charges of visa fraud. On July 1, 2013, Khobragade received a call from someone claiming to be Sangeeta Richard's lawyer and asked him to change Sangeeta Richard's visa status and compensate her with 19 hours of work per day. Khobragade thought the person who called him intended to blackmail him. As the case became more complicated, finally the Indian Embassy in the US asked for help from the US Department of Foreign State to immediately clarify this problem. On July 18, 2013, a law firm representing Sangeeta Richard called for a meeting with Khobragade and in that meeting Sangeeta made several requests to Khobragade, as follows:

1. Sangeeta requested that her work compensation be paid at US\$ 10 per hour including inactive time while she was outside the Khobragade reside;
2. Sangeeta asked Khobragade to convert her diplomatic passport to a regular passport;
3. Assistance with visa processing so that Sangeeta can continue to live in the US.

Upon this request, the Indian diplomat then informed Sangeeta that she was required to return to India first to apply for her passport to an ordinary passport and promised to pay all unpaid wages according to her request before her departure to India. After the meeting the Indian government revoked Sangeeta's diplomatic passport. On September 4, 2013, the US State Department sent a letter to the Indian Ambassador in the US to further investigate Sangeeta's case and inquire about evidence of the minimum wage Sangeeta was paid. Because of this letter, the Indian government filed a strong protest against the US government, because it felt that the

US did not respect the diplomatic immunity of Indian diplomatic representatives in the US where they were free from US legal action.

On the Indian side, the Delhi court issued a warrant for the arrest of Sangeeta Richard for being considered a provocateur and undermining India's foreign policy stability, then the letter was forwarded to the US Embassy in India to be submitted again to the US Department of State for immediate arrest because at that time Sangeeta was still in the US. On December 10, 2013, Philip Richard, along with two children, went to the United States on a T visa; This visa allows human trafficking victims and their close relatives to stay in the US to testify against people accused of human trafficking crimes. Indian media claimed that the plane tickets for Philip Richard, and Jennifer and Jatin's two children, were paid by the US Embassy to India. On 11 December 2013 Khobragade was charged with visa fraud. The indictment alleges that he committed visa fraud intentionally and under oath as provided in Title 28, United States Code, Section 1746.

Khobragade further submitted an employment contract to the US Department of State, in support of a visa application submitted by Khobragade for another individual, which he knew contained false and fraudulent statements. The visa fraud charge carries a maximum sentence of 10 years in prison and the false reporting charge carries a maximum sentence of five years. Based on charges filed by special agents with the US Department of State, Bureau of Diplomatic Security, United States Magistrate Judge Debra Freeman issued an arrest warrant for Khobragade. Khobragade was arrested by the US Department of State's Diplomatic Security Service on December 12, 2013 at approximately 9:30 a.m. after dropping her children off at school on West 97th Street in Manhattan. However, he was later released again by paying bail of US\$ 250,000 (Two Hundred and Fifty Thousand US Dollars) and surrendering his passport.

Upon his release, Khobragade emailed his Indian colleagues at the State Department that he had received inhumane treatment while undergoing questioning by US authorities. The following is an excerpt from the email:

*"I am so grateful for all the outpouring of unequivocal support and backing that has been available to me from the fraternity. I take comfort in the confidence that this invaluable support will also be translated into strong and swift action, to ensure the safety of me and my children, as well as to preserve the dignity of our service which is unquestionably under siege. While I was going through it, although I must admit that I broke down many times as the indignities of repeated handcuffing, stripping and cavity searches, swabbing, holding up with common criminals and drug addicts were all being imposed upon me despite my incessant assertions of immunity, I got the strength to regain composure and remain recognized thinking that I must represent all of my colleagues and my country with confidence and pride. I feel I can continue to do so thanks to this strong and prolific support"*

On December 18, 2013, Nikki Credic-Barrett, a spokesperson for the US Marshals Service, stated that Khobragade had not been subjected to inhumane acts. That agency regulations, the examiner may include a "visual inspection" of the body cavity. Credic-Barrett also stated that anyone taken to a holding cell from a New York federal

courthouse would automatically be subjected to a strip search if they were placed among other prisoners.

With reference to DNA swabbing, Credic-Barrett said that responsibility for the collection of DNA samples rests with the arresting agency, the US Department of State, Bureau of Diplomatic Security. The Indian government then proposed that Khobragade be transferred to the Indian mission to the UN, where he could enjoy full diplomatic immunity. Regarding India's reaction, the US State Department explained that the agreement when Khobragade was stationed in the US was not retroactive, meaning that India was still bound by a diplomatic agreement with India. Khobragade was granted a G-1 visa by the United States through the Department of State. On 8 January 2014 under the terms of Section 15 of the UN Headquarters Agreement between the UN and USA was granted full diplomatic immunity and would bar any court of jurisdiction over Khobragade. US officials said that the State Department had no choice but to grant Khobragade full diplomatic immunity after he was accredited to the UN because he did not pose a national security threat.

#### **Legal Basis**

United States version, From the perspective of the United States government, Khobragade was proven to have violated Title 28, United States Code, Section 1746 - Correction of conveyance documents which regulates visa fraud intentionally and under oath. It further alleges that Khobragade submitted an employment contract to the U.S. Department of State, in support of a visa application submitted by Khobragade for another individual, which he knew contained false and fraudulent statements. The visa fraud charge carries a maximum sentence of 10 years in prison and the false reporting charge carries a maximum sentence of five years.

The authorities holding Khobragade said they also did this to other detainees and that Devyani Khobragade's diplomatic immunity only applies when carrying out official duties. The statement issued by the US Department of Home Affairs and the prosecutor's office of the Southern District of New York City, the basis for Khobragade's arrest is the Vienna Convention article 43 paragraph (1), which states: "consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions." This means that the US does not consider that the appointment or appointment of personal employees by consular officials is something important for the smooth running of consular duties so that immunity rights do not apply when violations occur.

Indian Version, From the perspective of the Indian government, there are 3 theories underlying the granting of special privileges and immunities to diplomatic officials and representatives abroad. First, the theory of exteriority. According to this theory, diplomats are considered not to have left their country so that the provisions of the country where they are located do not apply to them. The second theory is the Representative theory where the diplomatic official represents the sending country and the head of the country so that he is automatically entitled to certain privileges in the receiving country. The third theory is the functional needs theory.

State officials and representatives, according to this theory, are given special privileges and immunities so that they can carry out their duties well and smoothly. Article 29 of the Vienna Convention states: "Diplomatic officials shall not be prosecuted, shall not be arrested or detained. They must be treated with the utmost respect and the receiving State must take appropriate steps to prevent attacks on their person, freedom and dignity." This immunity from legal authority has the provision that the legal immunity of diplomatic officials in the receiving country does not free them from the legal authority of their own country. If violations occur, the diplomat can be recalled or declared *persona non grata*.

### **Case analysis**

From an ethical and moral perspective, America is guilty of not respecting Indian representatives who are actually citizens who enjoy immunities and privileges, even though the Indian diplomatic representatives were indeed proven guilty of violating US law, namely committing visa fraud intentionally and under oath and added with Khobragade submitted an employment contract to the US Department of State, in support of a visa application submitted by Khobragade for another individual, which he knew contained false and fraudulent statements and the visa fraud charge was punishable by a maximum sentence of 10 years in prison and on false reports a maximum penalty five years.

However, the US action is still wrong because every diplomatic representative has the right to immunity or immunity from law in the receiving country in accordance with article 29 of the 1961 Vienna Convention. Both parties agreed to the international agreement because both countries had ratified it in their respective national legal instruments. Where ratification based on international treaty law is essentially an act of constitutional confirmation by the state of legal acts that have been previously carried out by the government (through signing the treaty).<sup>9</sup>

Regarding forgery and misuse of Visas, residence permits and other documents in article (b) states: can legally be arrested. On this basis the US government detained Devyani Khobragade. And despite holding the US accountable for the unpleasant treatment she received, Khobragade did not deny that she paid her maids below the minimum wage applicable in the US. However, the US government has violated international law in at least two provisions of the 1961 Vienna Convention, namely chapter 41 paragraphs 1 and 2: In chapter 41 paragraph (1):

*"consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and subject to a decision by the competent judicial authority."*

In the second verse of the same chapter it is emphasized:

*"consular officers shall not be committed to prison or be liable to any other form of restriction on their personal freedom save execution of a judicial decision of final effect"*

In Khobragade's case, it should be noted that the Indian Foreign Service (IFS = Indian Foreign Service Office) provides the post of domestic assistant [read: maid] for

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<sup>9</sup> Damos Dumoli Agusman, 2010, *International Treaty Law: Indonesian Studies and Practice*, Refika Aditama, Bandung, p.91

senior officials and diplomatic missions. Even though this post is provided and budgeted for from state funds, these household assistants are not recognized as part of the diplomatic staff by many receiving countries. The opening chapter of the 1961 Vienna Convention clearly states: "The purpose of granting these privileges and immunities is not to benefit individuals, but to assist the efficient implementation of diplomatic missions as representatives of states."

Whatever the reason for the detention, the US government itself will find it difficult to reject the argument that the arrival of a household assistant in the Khobragade family will help carry out Khobragade's duties as number two in the Indian Consul General in New York efficiently. By referring to the prelude to the convention above, the statement that the Khobragade situation does not fall within the provisions of privileges and immunities is refuted by itself. Apart from the law contained in the Vienna Convention, the treatment while Khobragade was in detention, namely handcuffing, stripping and cavity searching, as well as taking samples (DNA) that was forced on him, was excessive. This is an abuse and violation of the woman's human rights which is a very insulting act in Indian society

### **G. Kesimpulan**

A consular official is a person stationed in a country to act as a representative of its government and serve the citizens of the country where he is assigned. In carrying out their duties, consular officials are given privileges and immunities regulated by the 1963 Vienna Convention where the receiving State is obliged to guarantee and protect the privileges and immunities of consular officials. Based on international legal mechanisms, the US has committed violations of international law, namely not protecting or complying with the provisions regarding diplomatic representatives who have the right to immunity. Even if an official commits no crime or violation, the person with authority should ask permission from the country of origin of the diplomatic representative, this is useful for maintaining good relations between countries and between their citizens. Resolving violations by respecting representatives can be a conclusion that the country has good intentions in maintaining relations. So every country should always maintain good relations between countries, not destroy them. It is the obligation of the receiving country to respect the sovereignty and laws of the sending country attached to its diplomatic representation, this is useful to ensure that there is no bad faith in establishing diplomatic relations. America should not intervene and interfere too much with India, especially since this problem is a problem that originates from the Indian people themselves. The receiving country can intervene in the matter if it is directly desired by the diplomatic representative country

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