

ANALYSIS OF DIPLOMATIC LAW IN LIFTING THE HONORARY CONSUL OF THE STATE OF INDONESIA TO PALESTINE

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ABSTRAK

Penelitian ini dilakukan dengan tujuan untuk menganalisis bagaimana proses pengangkatan Konsul Kehormatan negara Indonesia dilihat dari perspektif hukum diplomatik bagi Palestina. Dengan menggunakan metode penelitian yuridis normatif. Dapat disimpulkan bahwa proses Konsul Kehormatan telah diatur dalam Konvensi Wina 1963 tentang Hubungan Konsuler dimana konvensi ini telah diratifikasi oleh Indonesia melalui Undang-Undang Nomor 1 Tahun 1982 tentang Konvensi Wina, dan pelaksanaan tugas dan fungsi duta besar. sebagai perwakilan diplomatik, telah diatur secara komprehensif dalam Konvensi. Wina 1961 tentang hubungan diplomatik.

Kata Kunci : Negara, Konvensi Wina, Hukum Perjanjian Internasional, Hubungan Diplomatik, Hubungan Konsuler

ABSTRACT

This study was conducted with the aim of analyzing how the process of appointing the Honorary Consul of the Indonesian state is viewed from the perspective of diplomatic law for Palestine. By using normative juridical research methods. It can be concluded that the Honorary Consul process has been regulated in the 1963 Vienna Convention on Consular Relations where this convention has been ratified by Indonesia through Law Number 1 of 1982 concerning the Vienna Convention, and the implementation of the duties and functions of the ambassador as a diplomatic representative, has been comprehensively stipulated in the Convention. Vienna 1961 on diplomatic relations.

Keywords: *Countries, Vienna Convention, International treaties law, Diplomatic relations, Consular Relations*

INTRODUCTION

Relations between countries are indispensable in order to meet the needs and interests of each country. Judging from the background, relations between countries were previously only arranged based on international customs, with various problems arising from these relations can no longer be solved by referring to international customs, countries choose to establish relations based on an international agreement. The general rules on international treaties are contained in the 1969 Vienna Convention on International Treaty Law. On May 23, 1969 and entered into force after ratification by 35

countries as stipulated in Article 84, namely on January 27, 1980 (Situngkir, 2018).

Diplomatic law according to Widodo is part of international law, because its enforceability crosses the boundaries of national jurisdiction. International Law is a set of legal rules governing the relationship between the subjects of international law, in which the rights and obligations of the subject are determined. Diplomatic law is part of international law, which specifically regulates diplomatic relations, consular relations, and state representation in international organizations (Widodo, 2012).

In essence, diplomatic law is part of International Law, some of which are the same legal sources as international law sources, such as existing international conventions. According to Sir Ernest Satow, diplomacy is the application of intelligence and wisdom to conduct official relations between governments of independent states, developing sometimes also for their relations with vassal states; or more short, conducting business between countries peacefully (Widodo, 2012).

The diplomatic law arrangements contained in the Vienna Convention of 1961 are the provisions or principles of international law governing diplomatic relations between states carried out on the basis of mutual agreement and the provisions or principles set forth in legal instruments as codification of customary international law and the development of international legal progress (Widagdo, 2008).

International law does not impose its law when there is an international treaty that is not ratified by a country, that international law is not a thing that all countries are obliged to follow but is a right given to a country to participate in cross-border relations. In this case, international law has good benefits for each country in carrying out its state life with other countries. International law that applies today is a law made by countries that will then be used as a source of law to carry out their state functions (Fatmawati & Aprina, 2019).

Diplomatic relations, as one of the instruments of foreign relations is a necessity of every country (Mestoko, 1988). Since Indonesia's independence on August 17, 1945, it has established relations with countries in the world, ranging from relations between two countries called bilateral relations to relations between several countries called multilateral relations. The established relationship aims to establish kinship between the countries involved in it, as well as to establish cooperative relations in various aspects. The opening of Indonesian embassies and/or consulates general in friendly countries is the embodiment of foreign cooperation relations. However, the opening of an embassy or consulate does not have a risk that has legal consequences for relations between countries. Indonesia's honorary consul for Palestine which was inaugurated on March 13, 2016 at the Indonesian Embassy in Amman in the Kingdom of Jordan is an act of the Indonesian state as a form of official recognition of the independence of the State of Palestine.

Diplomatic law is needed to be a guide in establishing relations with other countries. This foreign relationship is necessary to achieve the goals of the Indonesian state as affirmed in the Opening of the 1945 Constitution Alinea iv, namely protecting the entire Indonesian nation, advancing the general welfare, educating the life of the nation, and participating in implementing world order based on lasting peace and social justice (Widodo, 2012). Diplomatic and consular relations are governed by diplomatic law. The Government of Indonesia currently has 132 representatives consisting of 95 Embassies, 3

Permanent Missions to the United Nations in New York and Geneva, as well as a Permanent Mission to ASEAN in Jakarta 31 Consulates General and 3 Consulates of the Republic of Indonesia. In addition, Indonesia has also appointed 64 honorary consuls. The data mentions the importance of Indonesia's relations with other countries based on diplomatic law (kemlu.go.id, 2021).

Diplomatic law is needed by Indonesia as a source of law and guarantees of legal protection needed in conducting bilateral and multilateral relations. International Conventions on the rule of diplomatic law are the cornerstone of national law of any country that ratifies it. The reference conventions of diplomatic law include the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. Both conventions are followed by additional protocols in addition to supporting conventions including the Convention on Special Mission in 1969 and the Convention on Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (Convention on the Prevention and Punishment of Crimes against Persons who according to International Law are protected including Diplomats) in 1971 (Shafiza, 2014).

Burhan Tsani mentioned statements about international transaction agents or implementing relations between countries, namely:

1. State Department
 2. Permanent Diplomatic Representative
 3. Consular Representative
 4. Representative to International Organization of Non-Diplomatic Representative
- (Tsani, 1990).

Under the Vienna Convention of 1961 on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, Indonesia subsequently issued rules related to these two conventions, namely; Law No. 37 of 1999 concerning Foreign Relations, Presidential Decree of the Republic of Indonesia number 108 of 2003 concerning The Organization of Representatives of the Republic of Indonesia Abroad and Regulation of the Minister of Foreign Affairs of the Republic of Indonesia number 1 of 2014 concerning honorary consuls of the Republic of Indonesia, as well as several other rules that accommodate the Vienna Convention (Tsani, 1990).

The opening of Honorary Consuls of Indonesia in several countries is an implementation of the International Conventions and the above laws and regulations. It is known that the relationship between Indonesia and Palestine is not the first time in the relationship, previously Indonesia and Palestine have established relations since the Declaration of Palestinian Independence by the Palestinian National Council in Algiers, Algeria and have recognized the State of Palestine on November 16, 1988 (Syalom Wirna Kona, 2017). A year later Indonesia and Palestine signed a joint agreement as a sign of the start of Indonesia-Palestine diplomatic relations at the embassy level, on October 19, 1989. The signing was carried out by the Minister of Foreign Affairs of the Republic of Indonesia and officials of the Palestine Liberation Organization (PLO). After the signing ceremony, the Palestinian Foreign Minister assigned the Embassy of the State of Palestine in Jakarta.

Thus, Indonesia assigned its Chief of Mission to the Republic of Tunisia as the non-resident Ambassador of Palestine until June 1, 2004, when the assignment was handed down to the Indonesian Ambassador to the Kingdom of Jordan in Amman. State visits between the Indonesian and Palestinian governments continued until 2014. Thus, the efforts of the Indonesian government that wants to establish cooperation with Palestine have begun since 2012, but can only be realized in 2016 (Syalom Wirna Kona, 2017). An ambassador is a diplomatic representative at the level of a head of state who represents a country to live and carry out state duties in the receiving country, with an office in the capital of the country. The ambassador's duties are related to efforts to maintain diplomatic relations in a general sense, such as public issues, world order and security, international agreements, politics, economy, trade, education and technology, as well as on the duties of citizenship (Gracia Monica Sharon Anis, 2017).

DISCUSSION

The Process of Appointing an Honorary Consul Reviewed From Diplomatic Law

In principle, a sovereign state has the full right to send (the right of legation) ambassadors as diplomatic or consular representatives to other countries and is obliged to also receive diplomatic and consular representatives from other sovereign states. The right to represent and be represented is essentially an attribute of a fully sovereign state, but to begin to open relations, both at the embassy level and at the consulate level must be held in advance negotiations with the countries that will accept and or establish diplomatic relations concerned (Mon, 1965).

In other words, to initiate the opening of diplomatic relations between the sending country and the receiving country, it must generally meet the following conditions:

- a) The opening of diplomatic relations between countries occurs through mutual agreement (reciprocity), as well as on the procurement of missions (Article 2 of the Vienna Convention of 1961). This mutual agreement is outlined in the Joint Agreement or joint declaration. If examined, the key word of Article 2 is mutual agreement. There must be an agreement to open diplomatic relations and then an agreement to open permanent representatives. The opening of diplomatic relations and the opening of permanent representatives to the Vienna Convention are two different things. It also means that a country may open diplomatic relations but not directly followed by the opening of permanent representatives. The opening of diplomatic relations and the opening of permanent representatives are legally two different things. In Indonesia the opening of diplomatic relations and the opening of diplomatic representative offices are regulated by Presidential Decree.
- b) The opening of such diplomatic and consular relations in addition to following the provisions of the Vienna Conventions of 1961 and 1963, shall also be based on the principles of applicable international law, including according to customary international law and the principle of reciprocity (Denza, 1976). The legal basis of any diplomatic relationship is that there must be the approval of the receiving country of the foreign representative, the receiving country must lay the basis of the provisions governing the legal status and activities of the foreign diplomatic concerned, which provisions must also be based on the principles of applicable international law (Glahn, 1970). Diplomatic duties and missions, among others, to

develop or establish mutually beneficial relations between the sending country and the receiving country, especially the friendship between the two countries needs to be maintained or improved continuously.

The definition of diplomatic law according to Quincy Wright in his book *The Study of International Relations* provides limits in two ways:

1. The use of wisdom, shrewdness and skill in any negotiation or transaction;
2. The art of negotiation to achieve maximum results, in a political system that allows war to occur.

With these limitations, the meaning of diplomacy mentioned in the Oxford English dictionary according to Harold Nicholson is the most appropriate, namely:

1. Management of internal relations through negotiation;
2. The method by which this relationship is adjusted and managed by ambassadors and envoys;
3. Business or diplomatic art;
4. Skills or addresses in conducting international relations and negotiations.

Understanding Diplomatic Law is essentially a provision or principle of International Law governing diplomatic relations between countries carried out on the basis of mutual agreement and the provisions or principles are outlined in legal instruments as a result of the codification of customary international law and the development of the progress of International Law (Eka Wisanjaya, 2013).

Indonesia is one of the countries that ratified the Vienna Convention 1963, so the explanation of this diplomatic legal arrangement is contained in the Law, namely the Law of the Republic of Indonesia Number 1 of 1982 concerning the Ratification of the Vienna Convention on Diplomatic Relations and its Optional Protocol regarding The Matter of Obtaining Citizenship. But in this law it still contains arrangements in general. The detailed arrangements are contained in the Presidential Decree of the Republic of Indonesia no. 108 of 2003 concerning the Organization of representatives of the Republic of Indonesia abroad and the Regulation of the Minister of Foreign Affairs. An explanation of the arrangements of the honorary consul has also been established by the foreign minister. Specifically in the Regulation of the Minister of Foreign Affairs of the Republic of Indonesia Number 01 of 2014 concerning honorary Consuls of the Republic of Indonesia.

In each representative of the state has its own duties and functions. Where it has the task to carry out some of the duties and functions of representatives in its territory. Where the function of this honorary consul includes the protection of citizens of the sending country, the implementation of cooperation relations in the economic and socio-cultural fields by promoting in each field, namely trade, tourism, investment and other promotions that are included with the report at any time. This task and function is stated in article 3, namely the Honorary Consul has the duty to assist in the implementation as a task and function of the representative who carries it in a certain work area in the receiving country and article 4, namely in carrying out the Task as intended in article 3, the honorary consul carries out the function:

1. Services and protection of Indonesian Citizens and Indonesian Legal Entities;

2. Improvement of economic and socio-cultural relations and cooperation,
3. Economic promotion, trade, tourism, investment, labor and services. Socio-cultural promotion; and
4. Observation and reporting. Regulation of the Minister of Foreign Affairs No. 1 of 2014.

Then, the appointment of the Honorary Consul again is described in detail in article 7 paragraph (2):

- 1) The Representative proposes an Honorary Consul to the Minister of Foreign Affairs through the Secretary-General.
- 2) The Assessment Team conducts an assessment of the proposal of the honorary Consul.
- 3) The assessment team submits the results of the assessment to the Secretary General.
- 4) The Secretary-General recommends to the Minister of Foreign Affairs regarding the appointment of an honorary Consul
- 5) The Minister of Foreign Affairs submits the proposed appointment of the Honorary Consul to the President.
- 6) The President determines the presidential decree on the Appointment, Extension, Dismissal and Letter of Commission.
- 7) The Minister of Foreign Affairs stipulates the term of duty of the Honorary Consul to the President.
- 8) The Secretary-General conveys the passage of the Presidential Decree as intended in letter F to the Head of diplomatic representative who brought it (Regulation of the Minister of Foreign Affairs of the Republic of Indonesia, 2014).

In article 7, it emphasizes more on the assessment process of the place to be opened by the consul, as well as the appointment process carried out by the foreign minister who is given a letter of duty from the President through the Presidential decree. Then in article 8 paragraph (2) explains that the Minister of Foreign Affairs of the Republic of Indonesia who stipulates the term of duty of the Honorary Consul starts from the date of the presidential decree. It is clearly explained by the articles that the acting of the President or the extension of the hand of the president is the Minister of Foreign Affairs (Syalom Wirna Kona, 2017).

Diplomatic Law in Effectiveness in the process of appointing consuls Honor of the State of Indonesia for Palestine

In the process of the mechanism of appointing representatives of career consuls or honorary consuls (honorary consuls) in Indonesia there are several procedures or conditions that must be done in advance. Where the existing procedures are several stages of rules and considerations for establishing consular relations and diplomatic relations. These procedures become a reference in the procurement process of relations before the appointment process (Widodo, 2012). The mechanism for opening consular representatives in Indonesia applies the following rules:

1. The approval of the receiving country (RI) can be in the form of a memorandum or diplomatic note, if the notification of the opening of the consular representative is signed by the head of state or foreign minister of the sending country (foreign) then the memorandum of approval to be submitted in response is signed by the Head of State of the Republic of Indonesia. If between the sending country and the Republic of Indonesia (receiving country) has established diplomatic relations, but it is expressly stated that the opening of the consular representative can also only be signed by the head of the diplomatic representative of the sending country in Jakarta. If so, the answer to the application will be submitted by the Directorate General of Protocol and Consular Affairs on behalf of the Minister of Foreign Affairs of the Republic of Indonesia.
2. Diplomatic note containing a request from the prospective consular representative must contain: the desire of the country to open consular representatives in the territory of the Republic of Indonesia accompanied by several underlying reasons; plan of the position of the consular representative office; and the form or level of representation to be opened such as consulate general, consulate or other level. The memorandum may also contain a plan to increase the status of the consular office of the applicant's country, for example from the consulate office to the consulate general or from the level of the young consul to the consulate.
3. Procedures for submitting requests and answers to diplomatic notes or notes in Indonesia in the framework of opening consular representatives are:
 - a. The diplomatic note is addressed to the Ministry of Foreign Affairs u.p. (c.q) directorate of diplomatic facilities (Ditfasdip), from this section continued to other parts in the ministry of foreign affairs such as the Director General of Politics and the Director General of Socio-Culture and Information, then the note is discussed by the parties concerned.
 - b. The memorandum from the Director General of Socio-cultural Relations and information was forwarded to relevant agencies such as the Tni Mabes, BIA TNI, BAKIN to be discussed by him in terms of politics and security in close relation to the planned opening of consular representatives.
 - c. If the application is considered very important and urgent specifically the Ministry of Foreign Affairs of the Republic of Indonesia will hold a coordination meeting to discuss it.
 - d. The relevant agencies and given the memorandum after the discussion will immediately make answers containing opinions and suggestions and conclusions about the acceptance or rejection of the application is reviewed from the political and security side of the Republic of Indonesia to the Director General of Socio-Cultural Relations and Information. Based on this answer, the Director General of Socio-Cultural Relations and Information and the Director General of Foreign Information of the Republic of Indonesia made a diplomatic note which was the answer to the

request to the Directorate of Diplomatic Facilities. Patterned on some of the steps that must be passed, only a diplomatic note containing the acceptance or rejection of applications can be issued (Widodo, 2012).

The appointment of the consul is done because there has been an agreement or agreement between the two countries that will carry out the consul's relationship. After that, the appointment process was carried out because there had been a decree from the president in accordance with the Presidential Decree of the Republic of Indonesia Number 108 of 2003 concerning the Organization of representatives of the Republic of Indonesia abroad, in the Regulation in Article 25 which reads:

1. The opening and closing of the Diplomatic Representative Office or Consular Representative in another Country or the Representative Office of the International Organization shall be determined by presidential decree.
2. Implementation of presidential decree as intended in paragraph (1) shall be carried out by the Minister of Foreign Affairs. 11 Regulation of the Minister of Foreign Affairs of the Republic of Indonesia Number 1 of 2014 concerning the Honorary Consul of the Republic of Indonesia also supports what is stated in the Presidential Decree above, where article 5 also explains the same thing, in this article it reads:
 - a. Appointment of honorary consul shall be determined by presidential decree on the proposal of the Minister of Foreign Affairs.
 - b. Proposal as intended in paragraph (1) based on the recommendation of the Secretary-General.

Conclusion

The process of appointing an honorary Consul has been regulated in the 1963 Vienna Convention on Consular Relations where this convention has been ratified by Indonesia through Law No. 1 of 1982 concerning the Vienna Convention, where in general it is affirmed through the Law, Presidential Decree and Regulation of the Minister of Foreign Affairs as a rule that exists in national law in Indonesia or every country that ratifies the Vienna Convention 1963. Each country that has ratified this Convention shall be subject to the Decrees of the existing Convention whose implementation is demonstrated by the creation of national rules whose foundation of the 1963 Vienna Convention on Consular Relations.

Although in carrying out its Duties and authority from the point of view of Diplomatic Relations is still not very effective because there are still obstacles and pressures from other countries, namely One of which is Israel which still controls the undarah area from Palestine and some veto-wielding countries within the United Nations that do not agree with Palestine in Skan to be a sovereign state in the United Nations, the appointment of indonesia's honorary consul for Palestine is considered to be in accordance with existing Diplomatic Law. The Vienna Convention of 1963 and the existing national law, where in this case the legal point of view governing bilateral relations is the reference, so that the Appointment of the Honorary Consul is categorized as Effective in the legal point of law and not yet effective in the point of view of diplomatic relations.

The mechanism and process of placing ambassadors as diplomatic representatives

of a country to another country can only be done by mutual consent between the countries concerned, as stipulated in Article 2 of the Vienna Convention of 1961. The sending country first offers the candidate to be assigned. The country to be occupied retaliates whether it is willing to accept or not. After the candidate is declared acceptable by the country to be occupied, the government of the sending country then prepares a letter of trust for the candidate concerned. This trust letter is known as the "letter of credence".

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