

Examining the Limits of Defence and Indonesia's Diplomatic Responses after the Commercial Arbitration Decision (Study of the Satellite Dispute Between the Indonesian Ministry of Defence V. Navayo International AG)

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ABSTRACT: The complexity of diplomatic property immunity in international civil disputes is one of the interesting issues, especially the case of the threat of confiscation of Indonesian diplomatic assets in France due to the Singapore International Chambers of Commerce commercial arbitration award between the Indonesian Ministry of Defence and Navayo International AG. Although commercial transactions, in this case the lease of defence communication satellites, are carried out by the state or state organs (*jure gestionis*), resulting in limited jurisdiction in terms of trial and execution. However, Article 22 of the 1961 Vienna Convention guarantees the inviolability of the property of diplomatic missions, including the residence of representatives. Concerning that, Article 12 of the Articles on Responsibility of States for Internationally Wrongful Acts provides an obligation to the receiving State to protect the sending State's representatives in its territory, which, when not carried out, will give birth to state responsibility for violations of obligations that occur. This research analyses how the implementation of diplomatic property immunity is tested and the potential serious implications for bilateral relations if confiscation is realised. Hence, the urgency of diplomatic negotiations as a mitigation strategy to safeguard national interests and the stability of interstate relations.

KEYWORDS: Diplomatic Property Immunity, Commercial Dispute, Bilateral Relationship, *Jure Gestionis*, State's Responsibility

I. INTRODUCTION

The relationship between one country and another in the international scope cannot be separated from diplomatic relations based on mutual consent that applies reciprocally between countries following the provisions of Article 2 of the 1961 Vienna Convention on Diplomatic Relations. The implementation of state diplomatic relations requires facilities and infrastructure that can later become a means of connecting between countries and other countries. The means of connectivity can be realised by opening diplomatic relations and placing representatives of the sending state in the receiving state (Widgago & Nur W, 2008).

After the sending and receiving states agree to open diplomatic relations, diplomatic representatives will be given immunity rights and privileges to carry out their functions, duties, and missions properly without facing obstacles. The immunity attached to diplomatic agents in carrying out missions is divided into two types, namely, "Inviolability or inviolable provisions in diplomatic missions or immunity for diplomatic agents against any adverse interference with the recipient State's means of power" (Briggs, 1968) and "Immunity is intended as immunity to the jurisdiction of the recipient State both in the criminal, civil and administrative fields" (Christmas & Roisah, 2020). This right of immunity and privilege is rooted in the principle of sovereign equality and the need for peaceful international relations by the doctrine of *par in parem non habet imperium*, where the granting of immunity is the result of a long-standing history of diplomacy and is considered a custom in international law (O'Brien, 2004).

Immunity and privileges for diplomatic representatives were originally derived from the concept of absolute sovereignty of the state born in the 18th century (Kusumaningrum, 2018), where, the state and its extensions were considered entitled to be immune from prosecution. However, in its development in the 19th century, especially during World War I, a problem arose where the state had full control over the economy and trade (commercial) business and could not be tried for commercial disputes related to other countries. Referring to this phenomenon, there was a shift in understanding from absolute immunity and privilege for the state and its power agents to limited immunity and privilege.

Limited immunity distinguishes between sovereign acts (*jure imperii*) that remain protected by absolute immunity and commercial acts (*jure gestionis*) that allow the state to be tried in certain cases, especially those relating to commercial activities. This shift in understanding becomes important in the context of commercial civil disputes involving states and their proxy agents with other states, in this case, the case involving the Indonesian Ministry of Defence and Navayo International AG. The case

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Indonesian Ministry of Defence v. Navayo International AG began in 2015 when the Garuda-1 Satellite went out of orbit, causing a vacancy in the 123 degrees East Longitude Orbital Slot.

The MoD requested the management rights of the orbital slot to build a Defence Communication Satellite and signed lease contracts with several vendors, including Avanti Communication Limited, Navayo International AG, Airbus Defence and Space SAS, and others, even though the budget for the project was not yet available. From 2016-2018, the MoD experienced delays in lease payments to Navayo and other vendors, which led to a lawsuit from Navayo International AG at the International Chamber of Commerce (ICC) Singapore for breach of agreement, resulting in losses (Fitriana, 2025). The Singapore ICC ruling on May 31, 2022, found in favour of Navayo International AG and the MoD was ordered to pay USD 24.1 million in damages and a late fee of USD 2,568 per day for failure to pay on time (Tampubolon, Shintauli, & Permatasari, 2025).

Navayo filed a request for execution with the Central Jakarta District Court and then requested the confiscation of Indonesian government assets in France, including the houses of Indonesian diplomatic representatives, which was granted by the French court in 2024. Article 22 of the 1961 Vienna Convention stipulates that diplomatic representatives' premises, buildings, and archives are inviolable and immune from execution, seizure, confiscation, or actions detrimental to the sending State. The 1961 Vienna Convention Article 31 Paragraph (1) also confirms that diplomatic representatives have immunity from criminal, civil, and administrative jurisdiction with some exceptions.

The perspective of diplomatic law is related to the immunity of the residence of diplomatic representatives from the threat of confiscation or other acts of execution, meaning that this immunity is considered fundamental to ensure that diplomatic missions can run without interference from the receiving State. Several previous studies have examined the issue of diplomatic immunity, especially in the dimension of commercial civil disputes, such as Gunawarman, Dewanto and Suhariwanto (2020) in their article entitled "Immunity in Commercial Transactions" and Harun (2018) article entitled "Immunity of State Assets in Agreements Between SOEs (State-Owned Enterprises) with Foreign Parties in International Law Perspective" have analyzed that the property of diplomatic representatives is classified as an asset that has absolute immunity from civil seizure. Therefore, seizure or execution action against diplomatic property is not only a violation of the Vienna Convention, but also has the potential to cause a diplomatic crisis.

While previous research has provided a strong foundation of diplomatic immunity for diplomatic premises and buildings on the territory of the receiving State, particularly in the context of seizure or enforcement actions in international commercial disputes. However, there has been no comprehensive analysis of the differences between ordinary state assets and diplomatic property classified as property covered by absolute immunity, especially when one of the parties to an international commercial contract is an arm of the state, such as a ministry or state-owned enterprise. As such, the novelty of this research lies in its focus on how effective diplomatic property immunity is in the context of commercial civil disputes and the potential implications of seizing diplomatic property for Indonesia's bilateral relations and reputation.

II. FORMULATION OF THE PROBLEM

From the background that the author has described above, the formulation of the problems that will be studied in this research includes:

1. How does the implementation of property immunity of diplomatic representatives on the threat of confiscation in civil (commercial) disputes?
2. What are the potential implications for diplomatic relations between the sending and receiving States if the confiscation of diplomatic assets over commercial disputes is realised?

III. RESEARCH METHOD

This research uses a normative juridical method, with a statute approach, a conceptual approach, and a case approach (Marzuki, 2013). Legal materials include the 1961 Vienna Convention on Diplomatic Relations, Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) and other relevant legislation, court decisions, legal doctrine, scientific literature and non-legal materials through mass media related to the satellite lease case of the Indonesian Ministry of Defence v. Navayo International AG. The qualitative analysis method systematically interprets legal and non-legal materials to answer research problems.

IV. RESULTS AND DISCUSSION

A. Legal Standing of the Satellite Dispute between the Indonesian Ministry of Defence v. Navayo International AG

In 2015, the Ministry of Defence of the Republic of Indonesia entered into a satellite lease agreement to fill the vacant 123 degrees East orbit with Navayo International AG, a company subject to the laws of Liechtenstein. This contract aims to strengthen the country's defence communication and surveillance system, however, the contract implementation encountered problems, where there were alleged discrepancies between the services provided by Navayo International AG and the specifications contained in the

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contract. As a result of dissatisfaction with the services provided, the Ministry of Defence stopped satellite lease payments to Navayo International AG, which led to a dispute filed with the International Chamber of Commerce Singapore.

The satellite lease default dispute between the Ministry of Defence and Navayo is a commercial contract issue (business/trade). However, the implications of the dispute intersect with law enforcement efforts and the protection of state assets abroad. In the context of international law, referring to Article 26 of the 1969 Vienna Convention on the Law of Treaties, it is emphasized that the principle of *pacta sunt servanda* is a fundamental principle in entering into contractual relations, where this principle obliges parties who have been bound to a valid agreement to submit to and carry out the agreement in good faith (Iffan, 2018). The specific details regarding duration, cost, satellite technical specifications, and dispute resolution that are integral to the contract between the MoD and Navayo confirm that the parties' choice of forum is the International Chamber of Commerce (ICC) Singapore, which in a final and binding judgment ordered the MoD to pay damages of USD 24.1 plus a late fee of USD 2,568 per day.

The state is generally responsible for the wrongdoing of its organs or proxies, including ministries, based on the principle of state responsibility. As stated in the Draft Articles on Responsibility of States for Internationally Wrongful Acts 2001 article 4 reads "(1) *The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or a territorial unit of the State*". "(2) *An organ includes any person or entity which has that status by the internal law of the State*."

Article 7 reads, "*The conduct of an organ of a State or of a person or entity empowered to exercise elements of the government authority shall be considered an act of the State under international law if the organ, person, or entity acts in that capacity, even if it exceeds its authority or contravenes instructions*." This implies that all acts of state organs are considered acts of the state itself, and acts beyond authority (*ultra vires*) remain attributable to the state if done in an official capacity. Responsibility remains with the state, not just the administrative entity concerned, in this case, a ministry (Akande, 2004).

So the state cannot argue that the actions taken by its ministries are not from the central government, because the structure of state organs is not separated by administrative positions (Akande, 2004). Therefore, if an unlawful act or omission committed by one of the ministries results in harm in the context of the threat of confiscation of state assets (diplomatic property), the state can be held liable regardless of which ministry is involved (Lanovoy, 2020). Relying on the Singapore ICC ruling, Navayo filed an execution petition with the Central Jakarta District Court and subsequently requested the confiscation of Indonesian government assets in France, including the residences of Indonesian diplomatic representatives.

B. Implementation of Diplomatic Property Immunity in the Context of International Commercial Civil Dispute

The granting of immunity and privileges to diplomatic agents is based on several theories, including the theory of extritoriality, the theory of representative character, and the theory of functional necessity (Sanjaya, *et.al.*, 2019). In carrying out mission duties, diplomatic representatives, both individuals and diplomatic property, are protected with immunity and privileges. Diplomatic immunity in the 1961 Vienna Convention on Diplomatic Relations is regulated in Article 22 through Article 33, including Personal Immunity, Jurisdictional Immunity, Immunity of Diplomatic Family Members, and Immunity of Representative Buildings and Diplomatic Residences (Untari, 2024).

Regarding the immunity of representative buildings and diplomatic residences, Article 22 Paragraph (1) of the 1961 Vienna Convention confirms that diplomatic representatives premises, buildings, and archives are inviolable. The receiving State also has a special obligation to take all appropriate measures to protect the buildings of the representative from any form of disturbance or damage and to prevent any interference with the peace of the representative or the dignity of the diplomatic agent of the sending State as stipulated in Article 22 Paragraph (2) of the Vienna Convention 1961. In addition, Article 12 of the Articles on Responsibility of States for Internationally Wrongful Acts 2001 states that "*There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character*" which implies that if the receiving State fails to protect the diplomatic mission building as required in Article 22 of the 1961 Vienna Convention, then it is considered an international violation, which can trigger international responsibility.

As is well known, granting diplomatic immunities and privileges depends on international obligations, the implementation of which is carried out according to the national laws of each country (Grizelda, 2021). Protection of diplomatic representatives and their facilities is one of the manners between two countries, so the implementation of diplomatic missions can run effectively and efficiently. In carrying out mission duties, diplomatic representatives are protected by immunity, which, in its application, legal subjects with equal sovereignty cannot enforce their jurisdiction to resolve cases that are the authority of other jurisdictions, giving birth to absolute immunity.

However, in its current development, absolute immunity is more limited by dividing state actions into two criteria: *jure imperii* and *jure gestionis*. A sovereign state is entitled to protection based on the principle of absolute immunity if the state takes action in its capacity as a sovereign state, so that in this case, the state is in the status of *jure imperii* action. Meanwhile, protection based on absolute immunity cannot be given to a state that carries out commercial or trade actions such as buying and selling transactions or

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leasing, so that in this case the state is considered to be carrying out *jure gestionis* actions which result in the state being able to be sued and sued, its sovereignty is reduced or partially suspended before the court (Kate, Erhan, & Miller, 2024).

The Indonesian Ministry of Defence, in this case, although it is an extension of state power, in the context of entering into a lease agreement with Navayo International AG, acts in a commercial status or *jure gestionis*. Thus, it can be sued before the International Chamber of Commerce Singapore for civil disputes. This is also confirmed in Article 31 paragraph (1) letter c of the 1961 Vienna Convention which explains that diplomatic representatives enjoy absolute immunity from the criminal jurisdiction of the receiving State, immunity from civil and administrative jurisdiction is limited to, "*an act relating to a professional or commercial activity carried out by a diplomatic representative in the receiving State outside his official functions*".

C. Potential Impact of Seizure of Diplomatic Property on Indonesia-France Bilateral Relations and International Reputation

Concerning this dispute, the responsibility of the sending State, in this case Indonesia, as the defendant, which was found guilty of default in the satellite lease case between the Ministry of Defence and Navayo International AG, is required by the Singapore ICC to pay compensation, and the cost of fines remains in the realm of private law. Meanwhile, the confiscation of diplomatic assets, namely the houses of residence of diplomatic representatives, is a public law facility that is an integral part of the duties of the diplomatic mission (Grandaubert, 2023), where the residence of diplomatic representatives is assumed to be facilities and infrastructure used to support the smooth running of mission duties. Suppose the confiscation of the building of the Indonesian diplomatic representative in France due to this dispute is realised, in that case, the consequences that have the potential to arise are strained diplomatic relations between the sending State, namely Indonesia and the receiving State, namely France.

Seizure of diplomatic assets carried out in the receiving State's territory can be considered a serious violation of the receiving State's responsibility to fulfil, respect and appreciate international obligations. The receiving State is obliged to take appropriate measures to prevent and protect the diplomatic assets of the sending State from any form of interference or damage that threatens the peace or dignity of the diplomatic representation of the sending State as set out in Article 22 Paragraph (2) of the 1961 Vienna Convention and Article 12 of the Articles on Responsibility of States for Internationally Wrongful Acts 2001. The potential implications for bilateral relations and international reputation, where the state whose diplomatic assets are seized may respond with retaliation (a state's retaliation against another state whose treatment is considered unfair) or the seizure of the sending State's diplomatic assets in the territory of the receiving State can damage the receiving State's reputation in the international community because it reduces the confidence of other countries in the receiving State's commitment to international law (Ahmad, 2020).

The verdict of Singapore's International Chamber of Commerce (ICC) in the defense communications satellite case, a project of the Indonesian Ministry of Defense with Navayo International AG, has the potential to threaten many important aspects of Indonesia France bilateral cooperation, including cooperation in the fields of security and defense, investment and strategic industries, as well as diplomatic and multilateral cooperation. As is well known, France is Indonesia's main partner in modernising the main weaponry system (*alutsista*) after the United States. Apart from purchasing Rafale fighter aircraft and submarines, a Strategic Defence Cooperation Agreement (DCA) was signed in 2021 and reinforced in 2025 (Wicaksana, Sari, & Ginanjar, 2024).

Tensions due to the commercial arbitration dispute could undermine trust and the smooth running of these joint defence projects. In addition, French companies such as Airbus, Thales, Eramet, and Total Energies that have been actively investing in the energy, critical minerals, and green technology sectors in Indonesia (Febiola, 2025), due to this dispute, may create perceptions that hinder the expansion of French investment in Indonesia due to legal and political risks. Indonesia and France also have agreements in terms of diplomatic capacity building and cooperation in multilateral forums such as the UN and UNESCO, so the threat of confiscation of Indonesian diplomatic assets in Paris, France, could trigger diplomatic tensions and disrupt coordination on global issues such as Middle East peace and the Indo Pacific region where Indonesia has a dominant role.

V. CONCLUSIONS

The threat of confiscation of assets belonging to the Republic of Indonesia in France, in this case, the houses of diplomatic representatives, due to the satellite lease default dispute with Navayo International AG, shows that immunity to civil and administrative jurisdiction is limited, especially in the context of commercial actions (*jure gestionis*). The threat of seizure of diplomatic assets can potentially damage diplomatic relations between the sending State and the receiving State, because, according to Article 22 of the 1961 Vienna Convention, the receiving State is obliged to take steps to protect the property of diplomatic representatives from all forms of interference and potential harm to the sending State. Realising the seizure of diplomatic assets will have serious implications that will not only trigger significant diplomatic tensions. However, it can also damage the international reputation of the receiving State, in this case, France.

Due to the land communication satellite dispute of the Indonesian Ministry of Defence v. Navayo International AG, it can also disrupt Indonesia-France multi-sector cooperation, such as defence, investment, and peace missions. Therefore, the suggestion for Indonesia is that there is a need for internal strategic steps in terms of strengthening legal supervision and consultation mechanisms in cross-border projects. While external strategies, such as conducting diplomatic negotiations to resolve disputes peacefully with

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Liechtenstein and France to protect national interests. In addition, strengthening multilateral cooperation with other countries must be done to support Indonesia's position and prevent similar ones for current and future disputes.

REFERENCES

Journals:

- 1) Ahmad, Nehaluddin. "The Obligation of Diplomats to Respect the Laws and Regulations of the Hosting State: A Critical Overview of International Practices". MDPI Laws Journals Vol. 9, No.3. (2020), <https://doi.org/10.3390/laws9030018>
- 2) Akande, Dapo. "International Law Immunities and the International Criminal Court". American Journal of International Law Vol. 98, Issue 3. (2004).
- 3) Christmas, Sandy Kurnia dan Kholis Roisah. "Immunity Rights Problems before the ICC: Between the 1961 Vienna Convention and the 1998 Rome Statute". Jurnal Hukum Novelty Vol.11, No.2. (2020)
- 4) Grandaubert, Victor. "The Fate of Diplomatic Property". Revue Internationale de Droit économique Vol. XXXVII, No.1. (2023), <https://doi.org/10.3917/ride.371.0109>
- 5) Grizelda. "Hak Keistimewaan Diplomatik: Perbandingan Praktek Permohonan Corps Diplomatic di Indonesia". Jurnal Kertha Semaya Vol.10, No.1. (2021).
- 6) Gunawarman, Irsyad Prabowo, Wisnu Aryo Dewanto, dan Suhariwanto. "Kekebalan Diplomatik dalam Transaksi Komersial". KELUWUH: Jurnal Sosial dan Humaniora Vol.1. No.2. (2020)
- 7) Iffan, Ahmad. Keberadaan Asas Pacta Sunt Servanda dan Good Faith Menurut Hukum Internasional dan Hukum Islam. Journal Equitable Vol.3, No.1. (2018)
- 8) Kate Yoon, Doruk Erhan, and Chloe Miller. "On the Legality of Prosecuting State-Owned Enterprises: Halkbank v. United State". Yale Journal of International Law, (Sept.15, 2024), <https://yjil.yale.edu/posts/2024-09-15-on-the-legality-of-prosecuting-state-owned-enterprises-halkbank-v-united-states>
- 9) Lanovoy, Vladyslav. "The Guiding Principles on Shared Responsibility International Law: Too Much or Too Little? ". European Journal of International Law Vol.31, No.4. (2020)
- 10) Rahim, Tasya, Effe Baadilla, dan Johanis S Franci Peilouw. "Tanggung Jawab Perwakilan Diplomatik yang Melakukan Tindakan Penyalahgunaan Wewenang di Negara Penerima (Receiving State)". TATOHI Jurnal Ilmu Hukum Vol.1, No.12. (2022)
- 11) Sanjaya Putu Agus Harry, dkk. "Perlindungan Hukum Terhadap Gedung Perwakilan Diplomatik Dalam Perspektif Konvensi Wina 1961 (Studi Kasus Ledakan Bom pada Kedutaan Besar Republik Indonesia (KBRI) yang dilakukan oleh Arab Saudi di Yaman)". e-Journal Komunitas Yustisia Vol.2, No.1. (2019)
- 12) Tampubolon, Imagrace Triamorita, Margaretha Shintauli, dan Audry Permatasari. "Analisis Penyelesaian Sengketa dalam Perspektif Hukum Internasional (Studi Kasus Sengketa Satelit Komunikasi Pertahanan Indonesia dengan Navajo)". Media Hukum Indonesia Vol.2. No.6. (2025)
- 13) Untari, Retno. "Penerapan Hukum Terhadap Pejabat Diplomat yang Menyalahgunakan Hak Kekebalan dan Keistimewaan Diplomatik". Jurnal Nalar Keadilan Vol.4, No.2. (2024)
- 14) Wicaksana, Arya Putra, Suwanti Sari, dan Yusep Ginanjar. "Kerjasama Indonesia-Prancis dalam Pengadaan Alutsista Jet Tempur Rafale Tahun 2022". Diplomacy and Global Security Journal Vol.1. No.1. (2024).

Books:

- 1) Briggs H.W. *The Law of Nation*. (New York: Century Crofts, 1968)
- 2) Marzuki, Peter Mahmud. *Penelitian Hukum Edisi Revisi*. (Jakarta: Kencana Prenada Media Group, 2013)
- 3) O'Brien, John. *International Law*. (Cavendish Publishing Limited, 2004)
- 4) Widgago, Setyo dan Hanifa Nur W. *Hukum Diplomatik dan Konsuler*. (Malang: Bayumedia Publishing, 2008)

Thesis:

- 1) Harun, Amanda Adelina. "TESIS: Imunitas Aset Negara Dalam Perjanjian Antara BUMN (Badan Usaha Milik Negara) Dengan Pihak Asing Dalam Perspektif Hukum Internasional". (Yogyakarta: Universitas Islam Indonesia, 2018)
 - 2) Kusumaningrum, Dyah Agustina. "SKRIPSI: Tinjauan Yuridis Terhadap Pemberian Kekebalan dan Keistimewaan Diplomatik Kepada Istri Kepala Negara Menurut Hukum Internasional". (Yogyakarta: Universitas Islam Indonesia, 2018)
- Website:** 1) Fitriana, Nurul, "Kronologi Kasus Satelit Kemhan yang Mengancam Denda Ratusan Miliar", <https://www.kompas.tv/nasional/261595/kronologi-kasus-satelit-kemhanyang-mengancam-denda-ratusanmiliar?page=all> diakses pada tanggal 08 April 2025

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- 2) Febiola, Anisa, "Danantara Gandeng Perusahaan Prancis Eramet untuk Proyek Investasi Nikel," https://www.tempo.co/ekonomi/danantara-gandeng-perusahaan-prancis-eramet-untuk-proyek-investasinikel1583533#goog_rewarded diakses pada tanggal 03 Agustus 2025



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