

**Penyalahgunaan Kekebalan Diplomatik Berdasarkan
Konvensi Wina 1961 tentang Hubungan Diplomatik
(Studi tentang Kasus Kekerasan Seksual oleh Diplomat Arab Saudi
di India Pada 2015)**

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ABSTRAK

Dalam hubungan diplomatik tidak sedikit perwakilan diplomatik yang melakukan pelanggaran di negara penerima dengan menggunakan kekebalan dan keistimewaan yang dimilikinya. Berdasarkan kasus dalam penelitian ini, diplomat Arab Saudi yang bernama Majed Ashoor telah melakukan penyalahgunaan kekebalan diplomatik berupa kekerasan seksual kepada dua asisten rumah tangganya asal Nepal di tempat tinggal resminya, di India pada 2015. Atas laporan para korban, diplomat Arab Saudi tersebut kemudian melarikan diri ke Arab Saudi dengan berlindung menggunakan kekebalan diplomatik yang dimilikinya.

Tujuan penelitian ini adalah untuk mengetahui pengaturan kekebalan diplomatik menurut Konvensi Wina 1961 dan menganalisis upaya penyelesaian yang dilakukan oleh India terhadap pelanggaran yang dilakukan oleh pejabat diplomatik Arab Saudi terhadap asisten rumah tangganya di New Delhi, India pada 2015. Tipe penelitian ini merupakan penelitian hukum dengan menggunakan metode yuridis normatif yang didukung dengan pendekatan perundang-undangan dan pendekatan kasus dengan spesifikasi penelitian deskriptif analitis. Sumber data yang digunakan adalah data sekunder. Metode pengumpulan data dilakukan dengan studi kepustakaan yang disajikan dengan teks deskriptif naratif. Metode analisis data yang digunakan adalah metode yuridis kualitatif.

Berdasarkan hasil penelitian dan pembahasan diketahui bahwa pengaturan kekebalan diplomatik diatur dalam Pasal 22 sampai Pasal 37 Konvensi Wina 1961. Upaya penyelesaian yang dilakukan India adalah meminta kepada Kedutaan Besar Arab Saudi untuk melakukan penanggalan kekebalan diplomatik kepada perwakilannya agar India dapat menerapkan yurisdiksinya kepada diplomat Arab Saudi, kemudian Kedutaan Besar Arab Saudi tidak memberikan jawaban atas permintaan penanggalan kekebalan terhadap pejabat diplomatiknya. Diplomat Arab Saudi telah terbukti melanggar Pasal 29 Konvensi Wina 1961 mengenai kekebalan atas diri pribadi, Pasal 41 ayat (1) Konvensi Wina 1961 mengenai kewajiban untuk menghormati peraturan negara penerima, serta Pasal 375 dan Pasal 376 Criminal Law (Amendment) The Indian Penal Code 1983 mengenai kekerasan seksual terhadap wanita di India.

Kata kunci: diplomat, kekerasan seksual, penyalahgunaan kekebalan diplomatik, penanggalan kekebalan diplomatik.

***The Abuse of Diplomatic Immunity Based on
The Vienna Convention on Diplomatic Relations 1961
(Case Study of Sexual Violence by Saudi Arabian Diplomat
in India in 2015)***

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ABSTRACT

In diplomatic relations many diplomatic agents commit violations in the receiving State by using their immunities and privileges. Based on the case in this study, a Saudi Arabian diplomat named Majed Ashoor abused his diplomatic immunity in the form of sexual violence to two of his household assistants from Nepal at his official residence, in India in 2015. Because of the reports of the victims, the Saudi Arabian diplomat then fled to Saudi Arabia by using his diplomatic immunity.

The purpose of this study were to find out the arrangements for diplomatic immunity according to the 1961 Vienna Convention and to analyze India's efforts to resolve the violations committed by Saudi Arabian diplomatic officials against their household assistants in New Delhi, India in 2015. This type of research is legal research using normative juridical methods supported by statutory approaches and case approaches with descriptive analytical research specifications. Source of data used is secondary data. The data collection method was carried out by means of a literature study presented in descriptive narrative text. The data analysis method used is a qualitative juridical method.

Based on the results of research and discussion, it is known that diplomatic immunity arrangements are regulated in Article 22 to Article 37 of the 1961 Vienna Convention. The settlement efforts made by India were to ask the Saudi Arabian Embassy to waive diplomatic immunity to its representative so that India could exercise its jurisdiction over Saudi Arabian diplomat, subsequently the Saudi Arabian Embassy did not respond to requests for a waiver of immunity for its diplomatic official. Saudi Arabian diplomat have been proven to have violated Article 29 of the 1961 Vienna Convention concerning personal immunity, Article 41 paragraph (1) of the 1961 Vienna Convention concerning the obligation to respect the receiving state regulations, as well as Articles 375 and 376 of the Criminal Law (Amendment) of The Indian Penal Code 1983 regarding sexual violence against women in India.

Keywords: *diplomat, sexual violence, abuse of diplomatic immunity, waiver of immunity.*