

Legal Regime of Persona Non Grata and the Namru-2 Case

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Abstract

Just like the diplomatic immunity principle, the principle of persona non grata aims to ensure justice for both the state seeking to evict a diplomat (receiving state) and the state whose diplomat is being evicted (sending state). This is because both principles can guarantee the dignity and equality of sovereign states when resolving issues in international relation. Not every statement of persona non grata has to culminate in expulsion because a statement may be issued by the receiving state both after the diplomatic agent has started performing his functions and even before he arrives at the receiving state. If such a statement is followed by the expulsion of the diplomat, it should be based on article 41 of the Vienna Convention, 1961 (infringement on laws of receiving state and/or espionage actions). Also, expulsion may occur due to war and severance of diplomatic relation between two states. Indonesia has had to deal with issues of persona non grata on several occasions both as receiving and sending state. This paper analyses several cases of declaration of persona non grata involving several countries, especially Indonesia in order to give a better understanding of how the declaration of persona non grata plays out between states, and the significance of the Vienna Convention of 1961 on diplomatic relations. It also assesses the response of the Indonesian Government to the alleged abuse of immunity and privileges by personnel of the Navy Medical Research Unit-2 and suggests how the Indonesian Government can ensure that the laws of the country are respected by all including diplomats who have immunity.

Key Words: Dignity, Diplomatic Agent (Diplomats), Duties, Espionage, Expulsion, Justice, Namru-2, Persona non grata

1. Introduction

The terminology persona non grata is connected with the expulsion of a diplomatic agent by the government of a receiving state. The terminology comes from Latin or Roman language and it means 'person not wanted or undersirable man' in English. A declaration of persona non grata which precedes the expulsion of a diplomatic agent by a receiving state does not apply to a foreigner whose status is not diplomatic or consular; the expulsion of foreigners is normally called deportation and is based on various reasons but not as a result of the declaration of persona non grata, which is only used for a diplomatic agent (Henry Campbell Black 1979).

The statement or declaration of persona non grata which precedes any act of expulsion has become a serious and interesting issue for politicians, statesmen and law experts. The issue comes up frequently in relations among states. An example of a situation when a declaration of persona non grata led to expulsion was the declaration of an Indian diplomat, Devyani Khobragada persona non grata by the United States Government. She was accused of faking the visa of her house maid (Kompas 2014). Also, many cases of expulsions after the declaration of persona non grata affected many Soviet Union diplomats some decades ago. Most of them were accused of carrying out espionage activities. Further, there are cases which involved Indonesian diplomats that were declared persona non grata and expelled, as well as cases which involved the Indonesian Government declaring diplomats of other states persona non grata and expelling them. An issue which is generating a lot of outrage is the Namru-2 (Naval Medical Research Unit-2) issue; many people believe that the personnel of this research unit have indulged in acts that are harmful to Indonesia. Despite this, the principle of persona non grata has not been invoked for reasons which are unclear. Although the personnel of this research unit were put under the Department of Health Affairs, at the same time they constitute part of a foreign embassy. An agreement reached between the Republic of Indonesia and the United States on 16 January, 1970 stipulates, inter alia, that all the researchers and staff of the Namru-2, and United States' nationals are given facility and diplomatic immunity and are exempted from any tax duty. Also, that all the equipment needed for operational fluency of the Namru-

2's research institution may be imported into Indonesian territory. This could be understood because the Namru-2's research institution which is under the United States' Navy is in reality a part of the United States' Embassy.

A study on diplomatic law can not be separated from the history of diplomatic representative development, whose permanent character began since the seventeenth century. Also, the diplomatic representative became a major requirement for a state to have a close relationship with other countries both in political, economic and commercial fields. The diplomatic representative as a manifestation of bilateral relationship between states has various functions which have to be exercised by persons with the status of diplomatic agents. In order to carry out these functions effectively, they are equipped with immunity and privileges; the provisions are stipulated in the Regulation of Vienna, 1815. This regulation is still valid and was revised at the Vienna Convention, 1961, asserting the existing rules of international customary law regarding immunity and privileges of diplomatic agents (J.G Starke 1984).

The Vienna Convention which was successfully signed by many states constitutes a multilateral treaty and can be treated as a codification product. The Convention declares any rule of international customary law which has been applicable for a very long time and contains certain provisions constituting progressive development of international law in the field of diplomatic law valid. It is in conformity with the opinion or perception given by Ian Brownlie who points out that the rules of international law governing diplomatic relations are based on state practices which have run for a long time and have been backed also by legislations and decisions of national courts. The provisions and principles, including *persona non grata* principle have been codified or incorporated into the Vienna Convention on Diplomatic Relation (Ian Brownlie 1979).

In article 9, paragraph 1 of the convention, it is asserted that '*persona non grata*' shall be addressed to the head of a mission and any member of the diplomatic staff of the mission. Besides that, the article also mentions a phrase or terminology, '*not acceptable*' which is addressed to any other member of the staff of the mission. The phrase can be used and applied to diplomatic agents both before and after the agent concerned exercises his functions.

This article is aimed at explaining and analysing the following:

- 1) To what extent could any decision on *persona non grata* be carried out by the government of a receiving state?
- 2) What reasons could be used by the receiving state in deciding when to declare *persona non grata* against a diplomatic agent?
- 3) What actions should be taken by the Government of Indonesia in dealing with the conducts of the health researchers of Namru-2 (with their diplomatic immunities) strongly suspected of deviating from the humanitarian mission that they should be performing?

These problems, *inter alia*, will be analysed by this article which will also present some cases relating to decisions of *persona non grata* culminating in expulsion of diplomatic agents of different countries, including decisions of *persona non grata* to diplomats of Indonesian Republic in other states and to foreign diplomats in Indonesia when it was discovered that they had not been carrying out their tasks or functions based on provisions of the Vienna Convention, 1961.

2. Discussion

2.1 The Functions of a Diplomatic Agent

According to article 3, paragraph 1 of the Vienna Convention, 1961, functions of a diplomatic official consist, *inter alia*, of (Ian Brownlie 1979; Laila H.Hasyim 1980):

1. Representing the sending state in the receiving State.
2. Protecting the interests of a state and its citizens in the receiving state to any limits admitted and permitted by international law.
3. Negotiating with the government of the receiving state.

4. Ascertaining with all the legal methods, any circumstances and developments occurring in the receiving state and reporting them to the government of the Sending State.
5. Promoting friendly relations between the sending state and the receiving state and developing a relationship in the fields of economy, culture and science.

The phrase 'inter alia' stipulated in article 3 shows that the convention supposes that there are other functions of diplomatic representative. These functions are subject to custom and other practices which apply or conform to certain conditions and considerations of the receiving state. For instance when the receiving state does not have a consular representative whose functions includes performing registration of births, marriages and deaths of its citizens living in the receiving state, the diplomatic representative may carry out the functions or tasks of the consular representative. On the other hand, when a state does not have a diplomatic representative yet in the receiving state but has a consular representative, the consular representative may automatically perform tasks or functions of a diplomatic representative in the receiving state. This is affirmed by article 3, paragraph 2 of the Vienna Convention, 1961. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

In this context it should be observed that the functions and status of a diplomatic representative are quite different from the functions and status of a consular representative. While the former has functions in political affairs, the latter has functions mainly in commercial affairs, regarding, inter alia, trade, economy, culture and administration affairs relating to the interest of its citizens. The consular officer has no authority to carry out a political task, since such tasks can only be carried out by diplomats. Another difference between the functions of a diplomatic representative and a consular representative is seen in article 3, paragraph 1a of the Vienna Convention, 1961, which says that the function of representing a state in the receiving state shall be carried out by a diplomatic officer and not by a consular officer (Ian Brownlie 1980; Michael Akehurst 1982; J.G. Starke 1984).

The effective performance of a diplomatic representative's function is guaranteed through the existence of immunity and privileges, as introduced by exponents of the functional theory. This approach is different from the extraterritoriality and representative theory. Effective exercise of diplomatic functions will cause a principle of benefit and legal certainty to be present in bilateral relationships between sending and receiving states. In addition to enjoying immunity and privileges, diplomatic officers also enjoy a principle of inviolability which means that they will be inviolable by state apparatus in the receiving state with the result that at any rate, the receiving state's duty to protect the diplomatic agent is something absolute (David H Ott 1987; Ernest Satow 1957).

If the functions of diplomatic representatives are stated when the two states send and receive diplomatic agents, then based on article 43 of Vienna Convention, 1961, the functions of the agents of both states as well as the termination of such functions, inter alia, shall be based on (J.G. Starke 1984).

1. A notification done by the sending state to the receiving state, where the former declares that the officer has completed his task and function. In general, the function of a diplomatic agent is complete when the period of time allocated to him has elapsed. Besides that, the function may end because of the emergence war or recall or dismissal conducted by the sending state. Such acts are usually carried out on the basis of political disharmony, with the result that the incidents are often followed by a severance of diplomatic relation between both states.

2. A notification done by the receiving state to the sending state, where the former declares that the diplomatic agent has been unrecognised as a diplomatic agent. This declaration or statement of the receiving state is done because within a reasonable period, the sending state did not fulfill its duty to the agent concerned, hence he was declared unwanted or unacceptable by the receiving state. Statement or decision on persona non grata is usually issued because the officer concerned committed an action detrimental and harmful to the receiving state's interest, such as carrying out espionage activities or criminal action and other actions which are not tolerable by the receiving state. The officer concerned will be unrecognised as a diplomatic agent and the receiving state will give the sending state a notification about the statement of persona non grata. Based on juridical interpretation, his diplomatic function would be over. After the statement of persona non grata is issued by the receiving state because of a violation of the provision contained in article 41 of the Vienna Convention, 1961, the next thing to be done by the receiving state is expulsion, capture, detention and judicature if it is proved that he conducted any crime or violation of domestic laws (David H Ott 1987). It is made possible because the immunity and privileges which the diplomat enjoyed is no longer in effect as a result of his own action.

Although the diplomatic representative has immunity and enjoys inviolability principle, he is obliged not to manipulate and abuse the immunity and inviolability principle, that is, he is not to act at will in the receiving state. This condition indicates that behind the immunity and the principle of inviolability enjoyed by the diplomatic officer, he also has certain responsibilities which ensures that the interest of the receiving state is protected. The aim of such responsibilities is to provide a kind of equilibrium and ensure that justice is done, since equilibrium and justice should be ensured in the relation between the sending and receiving state. Immunity and privileges enjoyed by a diplomatic agent without any responsibility would threaten and endanger the sovereignty and dignity of the host country which might result in injustice, causing tension and conflict in the interstate relation; a condition which is questionable from the justice point of view, mainly from distributive justice. Distributive justice is aimed at preserving and causing equitable allocation between benefit and burden in society (Suri Ratnapala 2009). For example Campbell says that justice shall relate to allocation of benefit and burden between persons or individuals, and more largely that justice embraces matters or experiences which are wished or unwished. Distributive justice is also known as social justice, since a duty to ensure just distribution is suggested as social justice.

In the Vienna Convention, 1961, these duties are inserted in article 41, with paragraph 1 stipulating that without setting aside the immunity and privileges enjoyed by diplomatic officers, he is burdened with certain duties; first, to respect and observe, and not to violate any local regulation (regulations of the receiving state). Second, not to interfere with domestic affairs of the receiving state.

Infringement on both duties can justify the receiving state to take a decision regarding persona non grata which could be followed by expulsion of the diplomatic agent because of such violation. The expulsion is usually preceded by a decision on persona non grata with the result that it is known as expulsion based on persona non grata principle. Nevertheless, persona non grata is not the only reason for a receiving state to expel diplomatic agents. There are other reasons which could be used by the receiving state to expel diplomatic agents like the emergence of a dispute, war or even severance of diplomatic relation between the sending and receiving state.

It is a widely accepted practice that the reasons often used by a receiving state to decide on persona non grata and expulsion are those established in article 41, paragraph 1 sub 2, where there are many diplomatic officers conducting intervention within domestic affairs of the receiving state.

2.2 Diplomatic Immunity and Persona Non Grata

A diplomatic agent performing different tasks in a state is covered by inviolability principle, that is, the diplomatic agent concerned is inviolable. Besides the diplomatic officers, the principle of inviolability also covers the premises of the mission, archives and documents of the mission, domicile or private residence, correspondence or papers and properties of diplomatic agents. In reality this principle is translated and incorporated into what is known as immunity (articles 22, 24, 29, and 30 Vienna Convention, 1961) (Daily Kompas 2014).

The principle of inviolability and immunity are very similar and inseparable. In general people say that the immunity of the diplomatic agent is based on the principle of inviolability, which means that the essence of the inviolability principle is the same with the immunity enjoyed by the diplomatic officer. The immunity itself belongs to the sending state and a diplomatic officer cannot abrogate or waive his immunity without an approval of the sending state. It is a prerogative right owned by the government of his state of origin and it (immunity) is not a prerogative right of the diplomatic agent concerned.

An explanation of the two words can be found in a text book, Guidelines for Diplomatic and Protocol Order (Pedoman Tertib Diplomati dan Tertib Protokol) which states, inter alia, that the meaning of inviolability is:

- 1) immunity from the state instrument or law enforcement agency of the receiving state, and
- 2) immunity from all interference which can disrupt the diplomatic officer, which means that he has a right to obtain protection which has to be given by the law enforcement agency of the receiving state (Department for Foreign Affairs of Indonesian Republic 1969). This means that the immunity enjoyed by a diplomatic officer from jurisdiction of the receiving state is in criminal and civil law.

Certainly immunity is enjoyed by a diplomatic officer and it gives him exemption from the jurisdiction of the host state, particularly if he is involved in any violation of law in the receiving state. Nevertheless, the immunity

enjoyed is not something dogmatic and sacred because his immunity from the jurisdiction of the receiving state is subject to restrictions or exceptions in certain cases such as (Ian Brownlie 1979):

- a) actions for recovery of purely private immovable property,
- b) actions relating to succession in which he is involved in a purely private capacity, and
- c) actions relating to any private, professional or commercial activity exercised by him.

In these matters immunity doesn't apply to a diplomatic agent and the government of the receiving state exercises its jurisdiction over him in the form of criminal, civil and administrative jurisdiction. In practice, the restrictions or exceptions from a diplomatic officer's immunity from the host country's jurisdiction can only run effectively when the sending state's government carry out a waiver of immunity because through that singular act, the law enforcement apparatus of the receiving state can exercise its juridical competence. The waiver of immunity must be conducted explicitly or officially by the government of the sending state, since the immunity itself is a prerogative right owned by the state of origin of the diplomat. The waiver generally emerges when the diplomatic agent concerned commits any criminal action (as stipulated in laws of crime) or heavy violation of civil laws of the receiving state.

There was a case involving a diplomat of India, Devyani Khobragade (Deputy Consulate General) who was declared an unwanted person and expelled by the Government of United States because he was alleged to be involved in counterfeiting visa data (or visa document) for his servant. He was also alleged to have given a false statement about the wages of his domestic servant. Before he was expelled, the Government of United States captured and detained him (Daily Kompas 2014). The Government of United States asked the Government of India for permission to waive his diplomatic immunity with the aim of bringing him as an accused in front of a court, but the Government of India refused the demand of United States stating that there was no reason to eliminate or waive his immunity. The implication was that the United States could do nothing except that it declared the diplomat (Deputy Consulate General of India) an unwanted person and permitted him return to his country of origin, India (Daily Kompas 2014).

The exception as stipulated in article 31a to 31c and article 32 of the Vienna Convention, 1961, specifically addressed the immunity of a diplomatic agent. In practice such exception could be treated and implemented according to the principle of inviolability (Ian Brownlie 1979). Although it is not adequately mentioned as an exception, the statement of *persona non grata* followed by expulsion could be considered as a mechanism to achieve a reasonable solution or breakthrough by the government of the receiving state in the framework of defending and maintaining its national sovereignty and dignity. *Persona non grata* which usually culminates in expulsion aims to restore and preserve the legal order in the society which could be distorted by a disgraceful deed or violation of law by a diplomatic officer because he is exempted from the exercise of territorial jurisdiction or the law enforcement process. At the same time *persona non grata* could be regarded as the maximum sanction which could be decided or handed down by the receiving state to the diplomatic agent in the framework of preventing any performance of territorial jurisdiction or law enforcement process relating to any criminal, civil and administrative case. This is because such actions cannot be imposed on a diplomatic agent due to immunity being in effect. If the declaration of *persona non grata* and expulsion committed by the government of the receiving state is eventually replied by the sending state with a similar action towards the diplomatic officer of the receiving state, the action is called as a reprisal

Persona non grata which leads to expulsion is not contrary to the principle of inviolability and immunity but actually enhances it without *persona non grata*, the principle of sovereignty, independence and dignity will be threatened. This will result in disharmony or inequality in relations among states. Relations among states should be constructive and on the bases of sovereignty, equality and reciprocity principle. Without the principle of *persona non grata*, there would be disorder and anarchy in the international community.

Existence of *persona non grata* principle developed through international customary law and codified in article 9 of the Vienna Convention, is intended to construct and create balance, worthiness and justice between the principle of sovereignty and territorial jurisdiction on one hand, and the principle of inviolability and immunity on the other hand. The created balance, worthiness and justice would promote immaterial values. These values are distinct from material values. The material value would decrease and would even be exhausted when they are

distributed by the owner, whereas immaterial values such as goodness, truth, honesty, fairness, justice, etc., would be increasingly fertile and strong when they are distributed by the owner (Suri Ratnapala 2009).

Compliance with and implementation of the Vienna Convention, 1961, mainly the principles of inviolability and immunity, and persona non grata will promote immaterial values, particularly for states exercising these principles because they contain some values with universal character if they are followed and respected by mankind as a whole, that is by all civilized states and nations. Principles of inviolability, immunity and persona non grata have universal values since when states comply with and implement these principles as much as possible, they promote values such as goodness, harmony and justice. If the immaterial values are shared and distributed by one state to other one, the first state will not loss the values it shares; the values distributed grow more and more fertile and strong.

2.3 Various Cases Relating to Persona Non Grata

Previous cases which emerged in relation to the application of the principle of persona non grata on a diplomatic agent (diplomat) involved in criminal actions in the receiving state are presented in order to ensure a deep understanding of the principle which leads to withdrawal of the diplomatic immunity.

On 9 January 1982, a diplomat of Soviet Union, S.P. Egorov who was the assistant military attache on the Embassy Office of Soviet Union in Jakarta (Noegroho Wisnoemoerti 1981), was declared persona non grata by the Indonesian Government which meant that the diplomat had to leave Indonesian territory and had to return to his country. The Government of Indonesian Republic declared the diplomat from the Soviet Union persona non grata during the period of its glory, when it was famous as the Iron Curtain state. The Indonesian Government expelled the diplomat concerned because he was involved in espionage activities, in other words, his action interfered with the domestic affairs of the Indonesian Republic. Based on the Vienna Convention of 1961 on Diplomatic Relations, a diplomatic agent should not violate the extant laws of the receiving state. The diplomat of Soviet Union was instructed to leave Indonesia after he was declared an unwanted person by the Indonesian Government because of the espionage activities he conducted with another citizen of Soviet Union, Alexander Finenko who was captured by the security apparatus of Indonesian Republic. Alexander Finenko was not a diplomatic agent, but was the Chief of Soviet Union Flight Agency Office Aeroflot in Jakarta. He was suspected to be a key official of the intelligence agency of the Soviet Union, KGB. His capture by security agents had to be considered as a law enforcement operation in order to enforce the law and to ensure justice. The declaration of persona non grata which led to the expulsion of Egorov by the Department for Foreign Affairs of Indonesia Republic is also an adequate action containing maximum sanction. It is different from the case of Alexander Finenko who was not a diplomat. S.P. Egorov was a diplomat not subject to arrest by the apparatus of Indonesian security

In 1994, two United States diplomats were declared persona non grata and then expelled. The incident occurred because both diplomats were involved in a syndicate of narcotics crime (Marcel Hendrapati 1999). An investigation by the Indonesian police apparatus proved that both of them were significantly linked with narcotics circulation ring in the region of South East Asia. There was anxiety that such situation could threaten and endanger the states of South East Asia. From the point of view of the Vienna Convention, 1961, the involvement of the United States' diplomats in the very disgraceful deed can be classified as an infringement on the condition of their diplomatic immunity not to infringe on the laws of the receiving state, but to respect and obey the national legislation of Indonesia. Hence, it is in order for them to be declared unwanted in order to ensure that the law is upheld and that justice is done in the relation between the two states by virtue of the sovereign, equality and mutual respect principle. The declaration of persona non grata which led to the expulsion of the two diplomats by the Government of Indonesian Republic is in order because it would serve as a lesson to other diplomats and restore, as well as maintain the dignity of a sovereign state.

After the two diplomats had been declared unwanted persons and expelled from the Republic of Indonesia and had returned to United States, they were prosecuted in their country for the crimes they committed. According to prevailing provisions, although diplomatic agents are exempted from the territorial jurisdiction of the receiving state, a diplomatic officer after the declaration of persona non grata-and expulsion, is not exempted from legal liability in the sending state. Therefore, upon their arrival at United States, they were tried for their actions in a court in their state of origin. The district court of a state in the United States found them guilty and sentenced them on the basis of United States' law. Actions of the United States as the sending state towards its former diplomats is a manifestation of responsibility in bilateral relation. At the same time, these actions are also a

manifestation of responsibility in government and liability of its former diplomats to their country (Malcolm N. Shaw 1986). From jurisprudence point of view, actions taken by law enforcement agents of United States towards former diplomats are aimed at ensuring the rule of law and upholding justice in bilateral relation

In the cases mentioned above (case regarding Soviet Union's diplomats in 1982 and case regarding two diplomats of United States in 1994), the declarations of persona non grata on foreign diplomats by the Government of Indonesian Republic was based on the position and capacity of Indonesia as receiving state. However, in the case regarding 'elephant tusk' which occurred in Tanzania, the case regarding Leo Lopulisa which occurred in Philippines and the case regarding Nana Sutresna which occurred in England, Indonesian diplomats were declared unwanted persons by the respective receiving states. In its capacity as the sending state, Indonesia had an obligation to apologize to Tanzania, Philippines and England. The Government of Indonesia apologized to every state concerned in a bid to perform its responsibility to the receiving states respectively. The governments of each of the receiving state had appealed to the Indonesian Government that every Indonesian diplomat in question should account for their disgraceful deeds (Marcel Hendrapati 1999).

In the case regarding elephant tusk, a diplomatic agent of Indonesia, Abdul Gani was caught smuggling elephant tusks in a very great number despite the fact that the animal is a protected species in Tanzania because it is endangered (J.G. Starke 1984). There was apprehension that if proper measures like preservation of the environment were not taken, the animal would be in danger of extinction. The legislation of Tanzania stipulates a heavy sanction against those who catch, kill, appropriate, have, buy or sell, keep, donate, smuggle, command, support, help or aid the performance of these actions relating to the protected species (scarce wild animal) or its organs. In virtue of the involvement of the Indonesian diplomat in smuggling elephant tusks, the Government of Tanzania decided that the diplomat, Abdul Gani was not wanted and ordered him to leave Tanzania as soon as possible. The apparatus of law enforcement did not conduct any trial against the Indonesian diplomat concerned, because the Government of Tanzania does really honor the principle of inviolability enjoyed by the Indonesian diplomatic agent accredited to Tanzania. Nevertheless, the diplomat who was declared persona non grata is not free from legal liability in Indonesia, the sending state. The concerned authority had imposed on him administrative sanction in form of discharge from his job as diplomat, since his immunity from territorial jurisdiction in Tanzania does not give him a freedom from legal liability in Indonesia (Marcel Hendrapati 2014).

Due to the very shameful incident, the Government of Indonesia submitted an apology to the Government of Tanzania in performing its responsibility on violation of law by its diplomat when he was in their country. In resolving the elephant tusk issue, the principle of diplomatic immunity was not undermined because the Government of Tanzania respected the principle of diplomatic immunity and exempted the Indonesian diplomat from legal proceedings even though it lead to the declaration of persona non grata.

With respect to the case of the Ambassador of Indonesian Republic to the Philippines, Leo Lopulisa which happened in the 1980's, the Government of Philippines led by President Marcos through the Department for Foreign Affairs declared the ambassador persona non grata and asked the Indonesian Government to recall its Ambassador from Philippines (Marcel Hendrapati 2014). The declaration of persona non grata followed by expulsion of the Indonesian diplomat was done because his utterance was considered as interference in the domestic affairs of Philippines. By virtue of his expression or utterance, he was called to face the Secretary of State of Philippines, Carlos Romulo. It was after their meeting that the diplomat was declared an unwanted person and returned to Indonesia. The Government of the Republic of Indonesia ordered him to return and dismissed him from his function as Ambassador and diplomatic agent. Indonesian Government apologized to the Government of Philippines, because the Indonesian Republic bears the responsibility of Leo Lopulisa's action to the Government of Philippines. His immunity didn't give him any exemption from legal liability because when it was proved, as earlier stated, Leo Lopulisa was dismissed from his function as a diplomat.

Another case involving the privileges of diplomatic immunity took place about ten years ago when Nana Sutresna became the Ambassador of Indonesian Republic to United Kingdom. His son was involved in a narcotics case and had to deal with the police in England. He was suspected to have brought in some quantity of heroin discovered in the cabin of a car (cockpit). The Government of Indonesia through the Secretary of State relieved Nana Sutresna of his job as chief of diplomatic mission and stated that he was relieved because he had completed his tenure. Nevertheless, there were speculations in some quarters that his tenure may not have ended before he was recalled. They saw the reason given as a cover up and an attempt to employ diplomacy in preserving the confidential discussions between Indonesia and United Kingdom. It was suspected that the Government of United Kingdom as a receiving state had secretly asked the Government of Indonesia to recall its

Ambassador, because no diplomat, especially the Chief of Diplomatic Mission and his family's members should be involved in any disgraceful deed. It is believed that the reason for the cover up was because of the reputation of the diplomat in question. Nana Sutresna had been recognised at national, regional and international levels. Even if the suspicion in some circles that there was a confidential agreement between the two states in order to settle the dispute is correct, it was done in the interest of maintaining a cordial relationship between the states and is thus reasonable and credible. This is because the agreement was reached between the two states with the aim of maintaining a good relationship between them, protecting the reputation of the Ambassador and ensuring justice.

2.4 Case of Namru-2 and Persona Non Grata

The case of Namru-2 allegedly involves espionage activities; its existence or operation in Indonesia is based on an agreement which came into force since 16 January, 1970. Namru-2 which is an abbreviation of 'Naval Medical Research Unit-2' is a research institute under United States' Navy. It has a mission to conduct research on various spreading diseases in tropical territory (Kartono Mohamad 2008). All over the world there are two Namru units which were built as centre of medical research in tropical areas. Namru-1 built in Cairo has a purpose to study various diseases existing in the regions of Africa and Middle East, while Namru-2 exists in Jakarta to study various diseases in the countries of South East Asia region, possibly up to Ceylon or Nepal. Research centres were built in tropical areas because the United States' Government builds military bases and places its military force in the other states, mainly in the tropical areas. This is to protect its marines from various tropical diseases which do not exist in the United States. Construction of military bases and placement of military force in tropical countries are based on the consideration that after World War II, the defence boundary line for Uncle Sam's country no longer lies at its national territory only, but does extend far away from the land territory of United States. This ensures that none of its enemies will be able to attack its land territory (Yun 2008).

Based on the agreement concluded by the Minister for Health Affairs (Minister of Health), G.A. Siwabessy and the Ambassador of the United States to the Republic of Indonesia (FJ Galbraith) at the beginning of 1971, the contract of research cooperation was made in relation to a very dangerous virus. The agreement was signed between the institute of health and medical research of the United States Navy and the Institute of Health Research and Development under the Department of Health of Indonesian Republic.

The agreement concerned is regarded as damaging to Indonesia since all the research personnel and staff of Namru-2, who are citizens of the United States are awarded diplomatic immunity and privileges which come in form of exemption from any obligation to pay taxes and duties, because all the equipment for Namru-2 operational activities would be imported into Indonesia. The collective staff, worker and researcher of Namru-2 constitute a part of United States Embassy. They enjoy diplomatic immunity with the result that the Indonesian authority has no right to look into any diplomatic baggage going in and out of Indonesia. The agreement regarding the research cooperation between the two states is considered as an unequal one because the military of United States is allowed to take the blood sample of an Indonesian citizen, whereas Indonesia's military cannot take the blood sample of a United States citizen. Besides, the existence of Namru-2 research institute laboratory in Jakarta is potentially dangerous to a great degree and the threat could reach Jakarta, West Java Barat and Central Java in case of an accident. If an accident occurs, there may be a leakage of dangerous microbe from one of the research laboratory. According to the Convention on Biological Weapons, Indonesia as a party has an obligation to permit a team of international inspectors to investigate the area within a radius of 500 kilometer, which means that all the objects existing in Jakarta, West Java and Central Java can be investigated, including any military installation and other vital object classified as absolutely confidential (Kartono Mohamad 2008; Frederich L. Schuman).

Namru could be used as a veil for espionage activities because the medical officers of the United States' Navy are supplied with a manual requiring them to know and identify some diseases existing in a placement territory for United States' marines. In that manual, there is a chapter on medical intelligence which connotes spy and detective activities. Espionage activities committed by a foreign state towards a host country is not something new. Such activities could be conducted in some ways, including making use of sophisticated technology such as satellite, and exploiting a formal institution. It is not impossible that Namru-2 located in Jakarta as a research centre embracing regional territory of South East Asia and its surroundings, could be abused and used for spy activities. If the story making the rounds that there are spy activities going on in Namru-2 is true, it should be a cause of concern for all patriotic individuals and should galvanise support for the move to apply the principles of

Vienna Convention, 1961, especially the application of the principle of *persona non grata* on personnel of the research institution. It is surprising that the Government of Indonesia is yet to cancel the research cooperation contract despite it being used as a cover up for other activities and endangering the security of the nation to a large extent. It is an open secret that a state document classified as top secret was in the possession of its personnel (Namru-2) and this lends credence to the assertion that the research unit is only a cover up for other activities. Why did the Indonesian authority not investigate those (both citizens and foreigners) accused of involvement in the spy activities related to a state document classified as secret? Effort should be made to bring anyone involved in the spying activities to justice including the researchers of Namru-2 because immunity is not something that is cast on stone. Above all, Namru personnel should obey Indonesian laws because they were put under the Department of Health of Indonesia.

Although the research unit's personnel have immunity since they are also recognised as a part of the United States Embassy, whenever there is a serious reason to believe that they are involved in espionage, the Indonesian authority should summon the political will to follow the example of Venezuela who declared United States diplomats unwanted persons and expelled them after accusing them of spying and attempting to assassinate the President of Venezuela. Possible reasons why the Indonesian Government decided not to declare the Namru-2 personnel *persona non grata* are as follows:

- 1) the strong relationship or friendship between the two states both on the level of government and of society;
- 2 the psychological feeling of not wanting to offend a super power which it may be dependent on in one way or the other.

It is suggested that going into the future, the principle of *persona non grata* should be applied on the Namru-2 researchers to deter other diplomats from engaging in suspicious activities that might threaten national interest. This will restore the dignity and sovereignty of the state instead of continuously being influenced by the foreign policy of another state.

3. Conclusion and Recommendation

Based on the above discussion and analysis, the following conclusions and recommendations have been arrived at:

1. A declaration of *persona non grata* is closely related to the principle of inviolability and immunity. Not every declaration of *persona non grata* culminates in expulsion because sometimes, after some deliberations, the receiving state merely submits a warning to the diplomat against further violation of its laws. However, a declaration of *persona non grata* usually results in expulsion of the concerned diplomat as well as issuing a deadline for the diplomat to leave. This usually occurs if it is proven that he conducted a serious crime capable of threatening the security of the receiving state.

The declaration of *persona non grata* is an adequate check to the immunity and inviolability principle. It is the maximum sanction that can be applied to a diplomat whose actions damage the receiving state.

2. Cases of persons not wanted (*persona non grata*) demonstrates that article 41 of the Vienna Convention, 1961, in relation with the decisions on *persona non grata* culminating in expulsion is still relevant to ensure rule of law and justice. However, when there is a severance of diplomatic relation between states as a result of war or other reasons, expulsion could be carried out without the declaration of *persona non grata*.

The Indonesian Government rarely applies the principle of *persona non grata* which usually culminates in expulsion on foreign diplomats because it has to be properly implemented and should be specified in national regulations without setting other international regulations aside.

3. It is difficult to ignore the numerous reports that apart from conducting research in the fields of medicine and health, the personnel of Namru-2 are also suspected to have indulged in activities that deviates from the law of the host country. These activities could threaten national security and safety. A humanitarian mission accused of involvement in such acts should not be spared from the declaration of *persona non grata* on its personnel, whether or not it leads to expulsion or is limited to issuing a warning to the concerned personnel

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