Regulation of Diplomatic Immunity Under The Vienna Convention and Islamic Law: A Perspective of Protection and Legal Accountability

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Abstract

This research examines the differences regulation of diplomatic immunity between the Vienna Convention on Diplomatic Relations (1961) and the principles of Islamic law. The research problems are: (1) how the Vienna Convention and Islamic law define the limits of diplomatic immunity concerning the jurisdiction of the receiving state; (2) how legal accountability is applied to violations committed by diplomats. This research employs a normative-juridical approach, analyzing primary legal materials such as the Vienna Convention, the Qur'an, and Hadith and secondary sources including the opinions of fuqaha and international legal. The conclusion of this study: (1) Diplomatic immunity under the Vienna Convention on Diplomatic Relations and Islamic law, focusing on the balance between protection and accountability. The Vienna Convention provides legal privileges based on functional necessity, sovereignty, and reciprocity, but lacks enforcement mechanisms, potentially allowing impunity for serious violations. Islamic law, through the concept of *aman*, conditions immunity on ethical and moral responsibility, linking protection to justice and respect for local laws; (2) Legal accountability is essential to prevent abuse, emphasized by international norms and Indonesia's constitutional framework. Integrating positivist legal principles with Islamic ethical foundations offers a balanced model, ensuring diplomatic privileges are exercised with justice, legality, and moral responsibility.

***Keywords**:* Diplomatic Immunity; Vienna Convention; Islamic Law; Protection; Accountability

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Introduction

Diplomatic relations constitute the foundation of international interaction and cooperation among states. The practice of sending and receiving envoys, negotiating treaties, and maintaining diplomatic missions predates the modern state system and has existed since ancient civilizations. As noted by Huala Adolf, the exchange of envoys and diplomatic communication has long been recognized as an essential element in maintaining peace and cooperation between sovereign entities, even before the codification of international law (Huala Adolf, 2011). The principle of diplomatic immunity is a cornerstone of this system, ensuring that diplomatic agents can perform their functions without intimidation or interference from host governments. Immunity does not place diplomats above the law but guarantees the independence of their duties to represent the sending state without coercion or legal harassment.

The Vienna Convention on Diplomatic Relations, year 1961 codifies these privileges and immunities as part of customary international law. It consolidates centuries of diplomatic practice into a binding treaty defining the rights and duties of states and diplomats. As explained by Boer Mauna, the Convention unifies international diplomatic practice and establishes clear norms governing the conduct of diplomatic missions among states (Boer Mauna, 2011). However, the Vienna framework is primarily positivist grounded in sovereignty, reciprocity, and functionality. Taryana Soenandar argues that the Convention's rationale is not moral but practical. It is intended to secure diplomatic communication rather than to define justice (Taryana Soenandar, 2015).

From the standpoint of Islamic jurisprudence (fiqh al-siyar), however, diplomatic protection (*aman*) is conditional upon adherence to principles of justice (*'adl*) and moral conduct (*akhlaq*). Islamic law does not regard diplomatic inviolability as absolute but as a reciprocal moral covenant. The Prophet Muhammad (peace be upon him) provided safe conduct to envoys even those from hostile tribes so long as they respected peace and refrained from treachery.

The Qur'an also commands Muslims to extend safety to those seeking protection: *"And if any of the polytheists seeks your protection, then grant him protection so that he may hear the word of God, then escort him to where he will be secure"* (Qur'an 9:6). This verse provides the theological and legal foundation of *aman*, implying conditionality on peaceful behavior. In this sense, the Islamic conception of diplomatic protection reflects an ethical equilibrium between privilege and accountability. These envoys (*rusul*) enjoy safety and dignity (*karamah*) during their mission, but if they betray the trust of their covenant, their protection may be revoked.

Previous studies in Indonesia have predominantly examined the Vienna Convention through positivist legal lenses, focusing on sovereignty and reciprocity. Hikmahanto Juwana notes that diplomatic immunity in international law is justified only insofar as it is necessary for diplomatic function, not as an unlimited privilege (Hikmahanto Juwana, 2013). Similarly, Enny Soeprapto emphasizes that the Vienna Convention was not designed as a moral framework but as a practical legal instrument for maintaining stable interstate relations (Enny Soeprapto, 2018).

Meanwhile, Indonesian Islamic legal scholars have discussed diplomatic immunity through the concept of *aman* in *fiqh siyasah*, highlighting that this protection is divinely inspired and carries both moral and legal accountability. The contrast between positivist international law and the moral-legal framework of Islamic jurisprudence thus reveals two paradigms. The Vienna Convention institutionalizes a procedural order among sovereign states, while Islamic law embeds diplomacy within divine justice and accountability. Hence, this research seeks to bridge these paradigms through comparative analysis, examining how both systems conceptualize diplomatic immunity through legal positivism and reciprocity, the other through divine ethics and justice and how accountability functions within each.

Literature Review

Diplomatic immunity under the Vienna Convention is derived from centuries of customary practices recognizing the functional necessity of protecting diplomats from the coercive power of the host state. As Huala Adolf explains, diplomatic immunity aims to ensure that diplomatic agents can perform their duties effectively and independently without interference from the receiving state's legal system (Huala Adolf, 2011). Similarly, Sumaryo Suryokusumo notes that Article 31 of the Vienna Convention guarantees immunity from criminal, civil, and administrative jurisdiction, except in limited circumstances, to preserve the freedom of diplomatic communication and negotiation (Sumaryo Suryokusumo, 2008). The rationale behind these provisions lies in ensuring the independence and efficiency of diplomatic missions as instruments of international cooperation (Boer Mauna, 2011).

In contrast, Islamic legal thought, places moral and legal accountability at the center of diplomatic conduct. A guarantee of safety for foreign emissaries is rooted in Qur'anic principles of compassion and justice (Qur'an 9:6), ensuring that diplomatic protection is conditional upon peaceful behavior and moral responsibility. However, this privilege does not grant absolute immunity; the principle of al-mas'uliyyah (accountability) means that envoys remain responsible for transgressions committed within Muslim territory (Ali Yafie, 2005). Thus, while the Vienna framework is primarily procedural and functional, the Islamic model integrates ethical and divine accountability within the concept of diplomatic protection (Muhammad Saleh Ridwan, 2017).

Research Methodology

This research employs a normative–juridical approach, focusing on legal norms contained in international treaties and classical Islamic legal sources. Primary materials include the Vienna Convention on Diplomatic Relations (1961), the Qur'an, and Hadith. Secondary sources consist of scholarly works in international law, Islamic jurisprudence, and commentaries from modern legal scholars.

The analysis technique is qualitative and comparative, identifying similarities and differences in normative structure, objectives, and legal consequences of diplomatic immunity between the two systems. Legal reasoning follows the interpretative and analytical methods used in doctrinal research.

Results 4.1 The Vienna Convention and Islamic Law Define the Limits of Diplomatic Immunity Concerning the Jurisdiction of the Receiving State

The Vienna Convention on Diplomatic Relations (1961) represents the codification of long-standing international customary practices among sovereign states. The Convention's primary objectives are to ensure the effective performance of diplomatic functions and to provide legal certainty regarding the privileges and immunities granted to diplomats in the receiving state. This Convention serves as the foundation of modern diplomatic relations, regulating both the rights and obligations of the sending and receiving states, particularly concerning jurisdictional immunity and the protection of diplomatic missions.

The core principles of the Vienna Convention are based on three foundations: functional necessity, state sovereignty, and reciprocity. The principle of functional necessity means that diplomatic immunities are granted not for the personal benefit of diplomats, but to allow them to perform their duties without interference from the authorities of the receiving state. As noted by Gunawarman et al., the privileges and immunities of diplomats are intended "to guarantee the proper performance of diplomatic missions and to maintain smooth relations between states"

(Gunawarman, Dewanto, & Suhariwanto, 2017). The principle of state sovereignty indicates that a diplomat acts as an official representative of the sending state, and therefore any interference with the diplomat constitutes an interference with the sovereignty of the sending state.

Meanwhile, the principle of reciprocity serves as the foundation for the stability of diplomatic relations. Each state grants immunity to foreign diplomats with the expectation that its own diplomats will receive the same treatment abroad (Rindengan, 2019). Thus, the legal protection of diplomats is not unilateral but is part of a mutually beneficial international legal system.

The Vienna Convention also establishes specific provisions to guarantee diplomatic protection. Article 22 addresses the inviolability of mission premises, prohibiting local authorities from entering diplomatic premises without consent, while Articles 29 and 31 grant personal inviolability and immunity from criminal jurisdiction to diplomatic agents. As Putra and Abdurofiq note, such immunities are provided to ensure that diplomats can perform their duties freely without fear of pressure or legal action from the host state (Putra & Abdurofiq, 2023).

However, diplomatic immunity is not absolute. The Convention allows limited exceptions in civil cases, particularly those related to private or commercial activities unrelated to diplomatic duties (Gunawarman et al., 2017). In practice, when a serious violation occurs, the receiving state may declare a diplomat persona non grata, prompting the sending state to recall the individual as a political, rather than judicial.

The absence of a strict enforcement mechanism means that serious crimes committed by diplomats often go unpunished unless the sending state voluntarily waives immunity. This gap has created an imbalance between the principles of protection and accountability, as observed by several Indonesian scholars.

In contrast, Islamic law approaches diplomatic immunity from a moral and theological perspective. The Islamic legal tradition recognizes the concept of aman (a guarantee of safety) extended to foreign envoys (rusul) or non-Muslim visitors. As Khalik explains, Islam commands that foreign envoys who come for peaceful purposes be granted protection and security during their stay in Muslim territories (Khalik, 2016).

The foundation of aman lies in the Qur'an, particularly in Surah At-Taubah (9:6), which instructs Muslims to provide safety to anyone seeking protection so that they may hear the word of God. This forms the legal and ethical basis for ensuring the safety of envoys even those from enemy tribes (Abdurofiq & Putra, 2023). The Prophet Muhammad himself consistently treated foreign emissaries with respect and protection, even when their messages were unfavorable to Muslims.

Nevertheless, unlike the Vienna Convention, which establishes unconditional immunitIslamic law views diplomatic protection as conditional. Immunity applies only as long as the envoy respects the laws and norms of the host community. Should an envoy commit acts of treachery or endanger public security, the guarantee of aman may be revoked (Khalik, 2016). Thus, diplomatic protection in Islam is both moral and functional: it ensures safety for envoys who uphold justice and peace.

This comparison reveals that both the Vienna Convention and Islamic law emphasize the necessity of protecting diplomats to maintain peaceful relations among states. However, Islamic law integrates a stronger ethical dimension by linking immunity with justice (‘adl) and accountability (mas'uliyyah), ensuring that privileges are always accompanied by moral responsibility (Abdurofiq & Putra, 2023).

From a contemporary legal perspective, the coexistence of both the Vienna Convention and Islamic principles demonstrates that diplomatic immunity functions not only as a legal

mechanism but also as an ethical commitment to peaceful coexistence among nations. The Vienna Convention embodies the positivist tradition of international law, emphasizing procedural clarity and legal predictability. In contrast, Islamic law grounds its approach in moral and spiritual accountability before God, positioning diplomatic protection within a broader framework of ethical conduct and human dignity. This moral dimension, often absent in positivist interpretations, ensures that immunity remains a means to serve justice and not an excuse to escape it.

Moreover, the tension between protection and accountability remains a recurring challenge in international diplomatic practice. Under the Vienna Convention, the absence of a clear enforcement system often results in impunity for diplomats who abuse their privileges. In contrast, the Islamic system embeds a self-regulating mechanism rooted in moral obligation. An envoy's immunity is contingent upon their adherence to honesty, peace, and respect for local laws. This creates a form of conditional immunity that integrates both legal protection and moral restraint, potentially offering a more balanced model for modern international relations.

In recent years, scholars and international legal practitioners have argued for a reinterpretation of diplomatic immunity that aligns with global human rights principles. This perspective suggests that while immunity is necessary to preserve diplomatic functions, it should not extend to acts that violate fundamental human rights or endanger public welfare. The Islamic legal view, with its emphasis on justice (‘adl) and accountability (mas'uliyyah), can contribute to this evolving discourse by reintroducing the moral obligations that should accompany diplomatic privilege. As such, a synthesis between the positivist and ethical paradigms could enhance the legitimacy and fairness of diplomatic law.

Furthermore, the comparative study between the Vienna Convention and Islamic law underscores the need for an integrated framework that balances state sovereignty, diplomatic functionality, and human accountability. While the Vienna Convention provides the structural foundation for diplomatic relations, Islamic law offers a moral compass that reinforces justice and ethical conduct. Future international legal reforms might benefit from adopting this dual approach—anchoring diplomatic immunity not merely in legal norms but also in the universal values of responsibility, respect, and moral integrity.

4.2 Legal Accountability is Applied to Violations Committed by Diplomats

The debate surrounding diplomatic accountability becomes particularly complex when serious crimes are committed under the guise of immunity. In practice, the receiving state is often limited to diplomatic remedies rather than judicial enforcement. However, diplomatic immunity cannot be used as a justification to obstruct the enforcement of justice, especially in cases involving violations of human rights or serious criminal acts. This perspective reflects Indonesia's legal stance that the spirit of international law must align with universal principles of justice, and that the exercise of immunity should never negate the accountability inherent in international human rights obligations. Thus, even though the Vienna Convention provides procedural protection, it must be interpreted in harmony with jus cogens norms and humanitarian values recognized by both secular and Islamic legal orders.

Cooperation between states in the waiver of immunity demonstrates international solidarity in maintaining the integrity of diplomatic relations. Such cooperation also reinforces the notion that immunity is a functional privilege, not a personal entitlement. When a diplomat commits acts such as assault, corruption, or espionage, the refusal of the sending state to waive immunity not only erodes public trust but also weakens the credibility of diplomatic institutions as a whole.

Furthermore, the intersection of diplomatic immunity and human rights law is increasingly emphasized in modern jurisprudence. Indonesia's commitment to upholding

human rights in all circumstances aligns with the constitutional mandate of Article 28I of the 1945 Constitution, which guarantees the protection of fundamental human rights under any condition. Diplomatic privileges cannot override the fundamental rights of individuals, particularly the right to justice and legal remedy for victims. This reflects a transformative understanding of immunity in Indonesia's legal discourse, where immunity is not seen as a tool of privilege but as an institution that must evolve in accordance with justice and humanity. Thus, any interpretation of the Vienna Convention in Indonesia must consider the national constitutional framework and human rights commitments ratified under international treaties.

From an Islamic legal standpoint, accountability (mas'uliyyah) is intrinsically tied to the concept of justice ('adl). It is emphasized that Islamic law rejects any form of privilege that leads to oppression or impunity, as justice is a universal command that applies equally to rulers and common people. This interpretation resonates strongly with the modern call for moral accountability in diplomacy. While Western legal systems often rely on codified mechanisms, Islamic jurisprudence embeds moral responsibility as a divine and social duty. Therefore, the Islamic paradigm complements international law by reinforcing that diplomatic immunity should not serve as a shield for wrongdoing but as a facilitative framework for ethical representation and peaceful coexistence among nations.

The synthesis of these perspectives, international, constitutional, and Islamic demonstrates that diplomatic accountability is not a contradiction to immunity but a necessary safeguard to ensure its legitimacy. Immunity without accountability leads to impunity; accountability without immunity endangers diplomacy. Indonesia's approach, rooted in respect for international law and guided by moral and constitutional values, offers a balanced model where diplomatic immunity functions within the boundaries of justice, legality, and moral responsibility. Such a model provides a constructive contribution to global diplomatic practice, promoting a more ethical, transparent, and equitable international order.

Hence, the issue of diplomatic accountability in cases involving grave offenses such as human rights violations or crimes against humanity reveals the tension between international legal protection and the demand for national justice. Although the *Vienna Convention on Diplomatic Relations* (1961) provides legal safeguards for diplomats, these privileges are not absolute. Modern international legal doctrine emphasizes that diplomatic immunity cannot be invoked to protect actions contrary to *jus cogens norms*, such as torture or human trafficking. Therefore, the principle of immunity must be interpreted restrictively and proportionally in relation to the overarching objectives of universal justice (Gunawarman, Dewanto, & Suhariwanto, 2020).

The application of the *waiver of immunity* doctrine plays a crucial role in balancing diplomatic protection and the enforcement of justice. The *sending state* bears both moral and legal responsibility to waive immunity when its diplomat is suspected of committing a serious crime. Such action not only strengthens international solidarity but also demonstrates a commitment to integrity within diplomatic governance. Studies have shown that several states have selectively applied the waiver mechanism to ensure accountability while preserving legitimate diplomatic relations (Khalik, 2022).

Within the Indonesian legal framework, this principle aligns with the constitutional mandate articulated in Article 28I of the 1945 Constitution, which guarantees the protection of human rights under all circumstances. Consequently, the application of diplomatic immunity in Indonesia must respect both the *due process of law* and the principle of substantive justice. The Constitutional Court and other judicial institutions have consistently emphasized that the protection of human rights cannot be overridden by formal claims of immunity. This reinforces Indonesia's position in promoting a more humanistic and constitutionally grounded reinterpretation of diplomatic immunity.

From an Islamic legal standpoint, the principle of accountability (*mas'uliyyah*) is inseparable from the concept of justice (*'adl*). Islamic law rejects any privilege that results in oppression or impunity because justice is a universal command binding rulers and ordinary people alike. This moral foundation complements international law by embedding a sense of divine and social responsibility within the exercise of diplomatic functions. Hence, in Islamic jurisprudence, diplomatic immunity is viewed not as an unconditional right but as a trust (*amanah*) that must be carried out with ethical integrity and respect for human dignity.

Conclusion, immunity without accountability leads to impunity, while accountability without immunity threatens diplomatic stability. Indonesia's balanced approach, it grounded in respect for international law and guided by constitutional and moral values. It offers a constructive model in which immunity operates within the boundaries of justice, legality, and ethical responsibility.

Conclusion 5.1 The Vienna Convention and Islamic Law Define the Limits of Diplomatic Immunity

The Vienna Convention on Diplomatic Relations (1961) establishes a legal framework that ensures the effective performance of diplomatic functions through privileges and immunities based on functional necessity, sovereignty, and reciprocity. However, its lack of enforcement mechanisms often results in impunity for diplomats who commit serious violations. In contrast, Islamic law introduces the concept of *aman*, which provides protection for envoys based on moral and ethical principles, making immunity conditional upon respect for justice and local laws. This moral approach ensures that diplomatic protection serves both legal and ethical purposes, linking privilege with accountability. A synthesis between the positivist principles of the Vienna Convention and the ethical foundations of Islamic law could create a more balanced model of diplomatic immunity. Ultimately, integrating legal certainty with moral responsibility would strengthen global diplomatic relations grounded in justice, respect, and human dignity.

5.2 Legal Accountability Applied to Violations Committed by Diplomats

The relationship between diplomatic immunity and accountability represents a delicate equilibrium between the protection of international relations and the pursuit of justice. While the *Vienna Convention on Diplomatic Relations (1961)* guarantees functional privileges to diplomats, these protections cannot override the peremptory norms of international law or the universal principles of human rights. Indonesia's legal and constitutional framework demonstrates that immunity must coexist with accountability to prevent impunity and uphold public trust. Moreover, Islamic legal principles reinforce this perspective by grounding accountability in moral and divine responsibility, thereby ensuring that immunity serves as a tool for ethical diplomacy rather than personal privilege. Therefore, a balanced interpretation that harmonizes international, constitutional, and Islamic values offers a viable model for ensuring that diplomatic immunity operates within the bounds of justice, legality, moral responsibility, and contributing to a more transparent and humane global diplomatic order.

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