




The Abuse of Diplomatic Immunity in the *Basfar v Wong* Case as Modern Slavery

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Abstract

Introduction: This research is motivated by the numerous cases of modern slavery committed by diplomatic agent against domestic workers in the residences of diplomats who abuse diplomatic immunity.

Purposes of the Research: To analyze the forms and legal consequences of the misuse of diplomatic immunity in the ruling on a case of modern slavery committed by the Saudi Arabian Diplomatic Agent (Mr. Basfar) against a Filipino migrant worker (Ms. Wong) in the United Kingdom.

Methods of the Research: This legal research employs a normative legal research method which focuses on international law instruments relating to the issues contained in this study, utilizing statute and case approaches.

Results of the Research: The findings indicate that the Saudi Arabian Diplomatic Agent has abused diplomatic immunity by violating the national laws of the United Kingdom as the receiving state, such as regulations concerning minimum wage payments and working hour requirements. The legal consequence for Ms. Wong in this ruling is the right to receive compensation from Mr. Basfar. According to the 1961 Vienna Convention, there are two legal consequences for Mr. Basfar's misuse of diplomatic immunity: the waiver of diplomatic immunity by the sending state and the declaration of a *persona non grata* sanction by the receiving state.

Keywords: Diplomatic Immunity; Modern Slavery; Vienna Convention 1961.

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INTRODUCTION

Diplomatic relations refer to the relations carried out between countries as subjects of international law to meet the interests of countries in various fields in order to pioneer cooperation with the aim of improving better relations with other countries. Diplomatic relations in their implementation require intermediary instruments to be able to bridge relations between one country and another. The instrument of liaison between these countries is in the form of the placement of diplomatic representatives such as ambassadors from the *sending state* to the *receiving state*.¹

Diplomatic relations, especially those related to the placement of diplomatic representatives, there are legal aspects that must be considered regarding the provision of protection to diplomatic representatives when they carry out diplomatic functions. As it develops, diplomatic law not only regulates diplomatic relations between countries, but also includes consular relations and the role of states in interacting with international

¹ Tasya Rahim, et.al., Tanggung Jawab Perwakilan Diplomatik Yang Melakukan Tindakan Penyalahgunaan Wewenang di Negara Penerima (*Receiving State*), *Jurnal Ilmu Hukum*, 1 no. 12 (2022), p. 2.

organizations, especially organizations that have global responsibilities and memberships or commonly referred to as universal organizations.²

The juridical basis in the implementation of diplomatic relations between countries in the world is regulated in the 1961 Vienna Convention on Diplomatic Relations as the main guideline for countries in organizing diplomatic relations, to initiate diplomatic relations, the parties must comply with the provisions of Article 2 of the Vienna Convention of 1961 which reads as follows: "*The establishment of diplomatic relations between states, and of permanent diplomatic missions, take place by mutual consent*". Based on these provisions, it can be interpreted that when a country opens diplomatic relations, it must be done based on the principle of *reciprocity* and the principle of *mutual consent*, in carrying out diplomatic relations, diplomatic representatives need to be given immunity and privileges. This is so that they can carry out their diplomatic duties and missions effectively and efficiently, as stipulated in the 1961 Vienna Convention on Diplomatic Relations.

Based on Protocol II of the Guidelines for Diplomatic Order of the Ministry of Foreign Affairs of the Republic of Indonesia, diplomatic immunity and privileges are divided into two main concepts, namely *inviolability* and *immunity*. Inviolability refers to the personal immunity possessed by diplomatic representatives against interference or actions of the government or apparatus of power of the receiving state. This includes protection from adverse interference as well as the right to obtain asylum or protection from the government officials of the receiving country. Meanwhile, *immunity* is defined as immunity to the jurisdiction or authority of the court of the receiving country, in this case diplomatic representatives in the receiving country cannot be prosecuted or prosecuted, either in criminal, administrative, or civil cases.³

The immunity and privileges granted to diplomatic representatives are not to be used for personal benefit of the diplomatic representative. The granting of immunity and privileges is based on three types of theories in diplomatic law, namely *Exterritoriality Theory*, *Representative Theory*, and *Functional Necessity Theory*.⁴ Of the three theories, the Theory of Functional Needs is the most accepted theory by the international community and is very relevant to be applied today. Although diplomatic representatives may enjoy diplomatic immunity and privileges, diplomats still have an obligation to respect the national laws of the receiving country and not to interfere in the internal affairs of that country.

However, in practice, it is not uncommon for a diplomatic representative to abuse his diplomatic immunity by taking advantage of his immunity status to commit violations of the law in the receiving country. One of the cases where diplomatic representatives have committed acts of abuse of their diplomatic immunity rights that often occur is the case of modern slavery of migrant domestic workers employed by diplomatic representatives. The concept of modern slavery refers to a serious crime in which human beings are treated as objects of exploitation to reap financial gain. Modern slavery includes various forms of torture and exploitation that cannot be resisted or abandoned by a person because of threats,

² G. M Sharon Anis, Implementasi Hukum Diplomati Dalam Pelaksanaan Tugas dan Fungsi Duta Besar Menurut Konvensi Wina 1961, *Jurnal Lex et Societatis*, 5 no. 2 (2017): p. 99.

³ Tambajong, Pencabutan Hak Kekebalan terhadap Pejabat Diplomati Menurut Pasal 32 Konvensi Wina 1961, *Lex Administratum*, 11 no. 2 (2023): p. 3.

⁴ Boer Mauna, *Hukum Internasional: Pengertian, Peranan dan Fungsi Dalam Era Dinamika Global* (Bandung: Penerbit Alumni, 2003), p. 502.

coercion, violence, fraud, and/or abuse of power such as *forced labor*, *domestic servitude*, *human trafficking* and so on.⁵

According to *the International Labour Organization*, *migrant domestic workers* are any person who moves to another country or region to improve their material or social conditions involved in work relationships that are usually carried out in a private household environment.⁶ However, housework is very difficult to control, as it is done in the realm of the employer's household privacy. This further makes domestic workers more vulnerable to exploitative acts carried out by their employers.⁷ Domestic workers employed by diplomatic representatives in their homes are one of the categories of domestic workers who are particularly vulnerable to acts of exploitation and find it difficult to bring such cases to court, this is due to the existence of diplomatic immunity to criminal, civil and administrative jurisdiction that diplomatic representatives have under the 1961 Vienna Convention on Diplomatic Relations.

Many modern cases of slavery committed by diplomatic representatives have led to the issue of impunity for migrant domestic workers due to the status of a diplomatic representative who has diplomatic immunity. According to a global investigation by *the Rappler* media network released in 2023, there are more than 200 migrant domestic workers in at least 18 countries suspected of being victims of modern slavery in the form of labor exploitation acts carried out by diplomats and staff of international organizations. *Rappler* examined open-source documents from 1988 to 2021 that included court rulings, NGO case files, news reports, and legal journals. The investigation involved 160 diplomats, many of whom have avoided prosecution due to diplomatic immunity,⁸ There are many cases of modern slavery committed by diplomatic representatives against migrant domestic workers that end up being unable to be prosecuted because the courts have declared that the diplomatic representative has diplomatic immunity from the court's jurisdiction.

In 2017, there were reports of a modern slavery case against two Filipino domestic workers, Sherile Pahagas and Edith Mendoza carried out by German diplomatic representative, Pit Koehler, who at the time was working as the German Mission Counselor for the United Nations in New York, United States. In the employment contract that has been agreed upon by the parties, they are promised a salary of \$10.02 per hour and 35 hours of work for one week and one holiday on Sundays. The contract also promises them to be paid twice as much if they work more than 40 hours per week. However, upon arriving in New York, they were forced to work more than 90 hours per week, with a salary of \$4 without overtime compensation, and never provided any rest time during their work. The two domestic workers eventually sued Pit Koehler in U.S. District Court, but the court dismissed the lawsuit because the diplomatic representative was declared immune from court jurisdiction.⁹

⁵ Jamal Barnes, et.al., *A Vulnerability Approach to Irregular Migration and Modern Slavery in Australia*, *Australian Journal of Human Rights*, 29 no 1 (2023), p. 121-122.

⁶ ILO.org, "Who are Domestic Workers?" ILO.org, <https://www.ilo.org/topics/domestic-workers/who-are-domestic-workers>

⁷ Einat Albin dan Virginia Mantouvalou, *The ILO Convention on Domestic Workers: From the Shadows to the Light*, *Industrial Law Journal*, 41 no. 1 (2012), p. 3.

⁸ DW.com, "Report shows abuse of domestic workers by diplomats", Deutsche Welle, 2023. <https://www.dw.com/en/report-shows-abuse-of-domestic-workers-by-diplomats/a-66862451>

⁹ abcnews.go.com. "Nannies suing diplomat were 'lured to the US, 'endured grueling' conditions, complaint says", ABC News, 2017. <https://abcnews.go.com/US/nannies-suing-diplomat-lured-us-endured-grueling-conditions/story?id=50987486>

In 2023, there were also two reports of modern slavery cases against migrant domestic workers carried out by diplomatic representatives. The two cases both involved migrant domestic workers from the Philippines who were employed by their diplomatic representatives in Germany and Switzerland. The Filipino immigrants sued their diplomats for the act of modern slavery, in which they were forced to work hours that exceeded the limits in the working hours regulations for migrant workers, paid very low wages and even received no wages at all. However, the settlement in both cases also leads to the issue of impunity where the diplomatic representatives who employ them are declared to have diplomatic immunity that provides protection from court jurisdiction, both in criminal and civil cases, so that immigrants do not have access to file lawsuits in the courts of the receiving country.¹⁰

In 2022, there was an important ruling in the case of modern slavery carried out by diplomatic representatives who were declared not protected from the jurisdiction of the court of the receiving country. The ruling was set on July 6, 2022, where *the United Kingdom Supreme Court* (UKSC) / British Supreme Court issued a ruling in the case of *Basfar v. Wong*, a modern slavery case against a Filipino domestic worker named Josephine Wong carried out by Saudi Arabian diplomat Khalid Basfar in the UK. The British Supreme Court stated that the modern slavery carried out by Basfar to Wong was in the form of domestic *servitude* and *forced labour* where, for almost 2 years, Wong was forced to work every day in excess of the working hours in the UK and was not paid wages in accordance with the national minimum wage in the UK.

The majority of the judges in the British Supreme Court ruling, stated that the lawsuit filed by Wong falls within the exception to the diplomatic immunity provided for in Article 31 paragraph (1) c of the *Vienna Convention on Diplomatic Relations* 1961 which has been ratified by the United Kingdom through the 1964 *Diplomatic Privileges Act*, which is an exception to 'commercial activity' / 'commercial activities' carried out outside the official functions of the diplomatic representative for personal gain, so that a Saudi Arabian diplomatic representative who is still carrying out his diplomatic mission at the Embassy of Saudi Arabia in the UK is declared not to have diplomatic immunity from the civil jurisdiction of the British Courts.¹¹ Based on this background, the purpose of this study is to explain and analyze the form of abuse of diplomatic immunity as well as the legal consequences for the abuse of diplomatic immunity in the case of *Basfar v. Wong* is based on the 1961 Vienna Convention on Diplomatic Relations.

METHODS OF THE RESEARCH

The type and type of legal research used in this study is a normative legal research method that utilizes literature as a data source.¹² This research uses a research approach in the form of a *statue approach*. This approach is carried out by looking at international legal regulations related to the issue under study, especially regarding diplomatic immunity in the case of modern slavery of migrant domestic workers by diplomatic representatives. In addition, the author also uses a case approach.¹³ This research approach is used to refer to

¹⁰ Al Jazeera.com. "Four Filipinas sue diplomat employers in Switzerland for slavery", Al Jazeera, 2023. <https://www.aljazeera.com/features/2023/5/24/four-filipinas-sue-diplomat-employers-in-switzerland-for-slavery>

¹¹ Twentyessex.com. "A transformative Supreme Court judgement holding a diplomat accountable for modern slavery", Twenty Essex, 2022. <https://www.twentyessex.com/a-transformative-supreme-court-judgment-holding-a-diplomat-accountable-for-modern-slavery/>

¹² Nur Solikin, *Pengantar Metodologi Penelitian Hukum* (Pasuruan: Penerbit Qiara Media, 2021), p. 43.

¹³ *Ibid*, p. 58-59.

cases that are specifically related to the modern slavery of migrant domestic workers by diplomatic representatives based on the accumulation of various data and information sourced from literature studies in the form of books, scientific journals and international regulations which are then analyzed so as to produce a conclusion as a finding from the results of the research.

RESULTS AND DISCUSSION

A. Abuse of Diplomatic Immunity in the Case of Basfar v. Wong Under the 1961 Vienna Convention on Diplomatic Relations

Abuse of diplomatic immunity can be defined as an act of abuse of immunity for the personal benefit of a diplomatic representative that should be granted only for the purpose of carrying out diplomatic functions, with the aim of ensuring that the duties of diplomatic representatives can be carried out effectively and efficiently.¹⁴ In the event of an abuse of diplomatic immunity, there are two actions that can be taken by the *receiving state* in accordance with the protection guaranteed by the 1961 Vienna Convention. First, the receiving state can apply for a *waiver of immunity* to the country of origin (sending country) from the diplomatic representative who has violated the law. If this request is approved, the diplomatic representative can be tried in the court of the receiving country to account for the offense he committed.

Second, if the application for waiver of diplomatic immunity is rejected by the sending country, the receiving country can declare *persona non grata* to the diplomatic representative who has committed an abuse of diplomatic immunity and privileges. If a diplomatic representative has been declared *persona non grata* or a person disliked by the receiving country, the sending country is obliged to recall the diplomat or terminate his or her duties in the receiving country. Furthermore, the diplomat concerned must immediately leave the territory of the receiving country.¹⁵ Some of the motives for the abuse of diplomatic immunity are:¹⁶

1) Political/Subversive Activities

Article 41 paragraph (1) of the 1961 Vienna Convention makes it clear that although diplomatic representatives are granted immunity and privileges, they are still obliged not to interfere in the internal affairs of the receiving country. Violations of this provision, such as actions of a political or subversive nature, may result in the diplomatic representative being declared *persona non grata* and required to leave the territory immediately of the receiving country.

2) Violation of the Laws and Regulations of the Receiving Country

The 1961 Vienna Convention has provisions that can trigger violations by diplomats. Although the 1961 Vienna Convention affirms that diplomatic representatives have immunities and privileges, they are still obliged to comply with the laws and regulations in force in the receiving country. However, this provision cannot completely prevent violations from occurring. Such violations are generally committed individually, although in some cases they may involve diplomatic representatives or even be committed on behalf

¹⁴ Pamela Ruus, *Aspek Hukum Penyalahgunaan Hak Kekebalan dan Keistimewaan Diplomatik Menurut Konvensi Wina Tahun 1961, Lex Privatum*, 5 no. 7 (2017): p. 152.

¹⁵ Sefriani, *Peran Hukum Internasional Dalam Hubungan Internasional Kontemporer* (Jakarta: Rajawali Pers, 2016), p. 159.

¹⁶ Sumaryo Suryokusumo, *Hukum Diplomatik, Teori dan Kasus* (Bandung: Alumni, 2005), h. 122.

of the sending country. Although diplomatic representatives are granted immunity and privileges, they are not absolute. The 1961 Vienna Convention also regulates the legal limitations listed in Article 27, Article 31 paragraph (1), letters (a), (b), and (c), Article 41 paragraph (1), and Article 42.

3) Espionage Activities

Espionage is an act of spying carried out to collect confidential information without obtaining permission from the rightful owner of the information.¹⁷ Spying/reconnaissance activities carried out by diplomatic representatives are a form of violation of diplomatic immunity. If this happens, the diplomatic representative can be immediately declared *persona non grata*. Examples of activities that fall into espionage include the covert or covert collection of information through diplomatic agents in the recipient country, or even using local populations as a source of information.¹⁸

Based on the results of the British Supreme Court's decision in this case, Khalid Basfar was declared not protected from the immunity of the British Court of Civil Jurisdiction over Wong's lawsuit against modern slavery in the form of *domestic servitude* and *forced labour* which fall under the category of diplomatic immunity exemption based on Article 31 paragraph 1 letter c j.o Article 42 of the 1961 Vienna Convention on Relations Diplomatic. Article 31 paragraph 1 letter c states that, "diplomatic agents are entitled to immunity from the criminal, civil, and administrative jurisdiction of the courts of the receiving State, except in such cases as actions relating to professional activities and commercial activities outside the official diplomatic functions of the receiving State. This article also correlates with Article 42 which states that, "diplomatic agents shall not carry out any professional or commercial activities/activities in the recipient country for personal gain."

All judges agreed in the decision that the employment contract of a domestic worker does not fall into the category of commercial activity as stipulated in Article 31 paragraph 1 (c) of the 1961 Vienna Convention, where activities such as the purchase of goods and services and domestic work contracts related to daily activities incidental to diplomatic representatives cannot be categorized as commercial activities in Article 31 paragraph 1 (c) of the 1961 Vienna Convention. However, the majority rejected Basfar's opinion that the same applies to acts of exploitation in employment contracts between domestic workers and diplomatic representatives. The act of exploitation against Wong clearly cannot be equated with the work of ordinary domestic workers incidental to the daily life of diplomats, and the court is convinced that the exploitation carried out over a long period of time against Wong was carried out for Basfar's personal gain, which is an act relating to commercial activities and therefore falls under the category of exemption from immunity from civil jurisdiction in Article 31 paragraph 1 (c) Vienna Convention.

Furthermore, based on the facts in this case, Basfar had committed acts of modern slavery against Wong in the form of forced labor and domestic slavery. The definition of *forced labour* is explained in Article 2 paragraph (1) of the *Forced Labour Convention 1930* (No. 29) which states: "... the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." The article defines that forced labor is all the work or services demanded of a

¹⁷ The Practical Guide to Humanitarian Law, "Espionage", <https://guide-humanitarian-law.org/content/article/3/espionage/>

¹⁸ Cathy Anggraini, et.al., Penyalahgunaan Hak Kekebalan Diplomatik Ditinjau Dari Konvensi Wina 1961 (Studi Kasus Penyelundupan Emas Oleh Pejabat Diplomatik Korea Utara Di Bangladesh, *Diponegoro Law Journal*, 5 no. 3 (2016): p. 12-14.

person under threat of any punishment and that the person does not offer himself or herself voluntarily. There is a further explanation of the two indicators of the definition.

First, "*menace of any punishment*" can take various forms, such as physical violence, restraint, psychological violence and financial punishment, including non-payment of wages or being paid with low wages and not in accordance with the National Minimum Wage. The second indicator is "*the work isn't being performed voluntarily*", which includes physical confinement at home, fraud related to terms and conditions in employment contracts, and retention of identity documents such as workers' passports.¹⁹

Based on this definition, the work performed by Wong met all the working conditions under the conditions of forced labor that Wong experienced during his work with Basfar at his residence. The facts in this case state that while Wong was working with Basfar, he physically isolated Wong by not allowing Wong to leave the house except to throw garbage. Basfar has also violated the rights of workers, namely the right to get wages in accordance with the British National Minimum Wage and the right of workers to get rest during work. Not only that, Wong was also subjected to psychological torture where he was constantly yelled at by Basfar and his family, belittled by being called offensive names, and humiliated by being forced to wear a doorbell around his neck in order to continue to be called for the needs of Basfar and his family.

In addition to forced labor, another form of modern slavery carried out by Basfar against Wong based on the verdict is *domestic servitude*. The definition of *domestic servitude* is not explicitly defined in international conventions, but can be interpreted as a form of slavery to domestic workers that specifically occurs in the employer's private home that makes people work in situations of forced labor and become victims of exploitation where they often receive very low wages or even not pay wages at all and are subjected to violence and threats from his employer.²⁰

The actions that have been taken by Basfar are acts related to commercial activities carried out outside of their official functions, because one of the main elements that can make an activity a commercial activity is that there is an element of personal *profit*. The facts in this case state that Basfar did not pay Wong's salary in accordance with the employment contract, employing him from 7:00 a.m. to 11:30 p.m. every day without rest or holidays, Basfar has made a huge profit. The work done by Wong is equivalent to the work of two employees, who work in two *shifts*, if done under normal working conditions.

The financial gain Basfar made from hiring Wong can be calculated by comparing the amount of salary that should have been paid under his employment contract, with the amount actually paid. The financial gains generated in the form of money are very significant. To take this into account, the majority of judges used one of the basic methodologies used by the *International Labour Organization* (ILO) to estimate the benefits of forced labour in domestic work, in its report entitled "*Profits and Poverty: the economics of forced labour*", stating that, "*domestic services create an economic value added, and therefore the savings made by the employer on expenditures count as profits.*"²¹ That is, "domestic services

¹⁹ Ms. J Wong v. Mr. Khalid Basfar, *The United Kingdom Supreme Court UKSC* (2022): p. 27 para. 77-78.

²⁰ The Freedom Fund, "*What is modern Slavery? Domestic Servitude*", <https://www.freedomfund.org/what-is-modern-slavery/domestic-servitude/>

²¹ Ms. J Wong v. Mr. Khalid Basfar UKSC (2022), *Op.cit.*, p. 18-19 para. 54-56.

create economic added value, therefore the savings made by employers on expenses will be counted as profits."

Based on the facts in this case, for almost 2 years Wong worked (21 months), he was only given a salary for 6 months. This means that Basfar did not pay Wong his salary for 15 months, so it can be concluded that he had made personal *profit* by saving for his actions by not paying Wong's salary and still receiving domestic services performed by Wong. The Court stated that this proved a very important distinction from what qualified as commercial activity in this case, so that the act fell into the category of exemption from diplomatic immunity under Article 31 paragraph 1 letter c j.o Article 42 of the 1961 Vienna Convention on Diplomatic Relations.

Khalid Basfar has abused diplomatic immunity by violating the laws and regulations of the recipient country, in this case the United Kingdom. Basfar has deprived domestic workers of employment rights in the form of the right to earn a salary in accordance with the National Minimum Wage standard and the right to rest as stipulated in the UK national law, namely the UK National Minimum Wage Act 1998) in Article 1 j.o Article 31 related to the right to the national minimum wage, and Article 10 paragraph (1) and Article 16 paragraph (1) related to the Right to *daily rest* and the right to holiday *pay* under the Working Time Act and the United Kingdom Terms and Conditions of Employment 1998 (*The Working Time Regulations 1998 No. 1833 Terms and Conditions of Employment*).

Diplomatic representatives are granted immunity and immunity, which also applies to family members living with them, as provided for in Articles 22 to 41. However, the 1961 Vienna Convention also establishes legal limitations, as stated in Articles 27, 36, 41 paragraphs (1) and 42.²² Based on this article, Khalid Basfar as a diplomatic representative has violated the provisions of Article 41 paragraph (1) of the 1961 Vienna Convention which states that even though diplomatic representatives are granted diplomatic immunity and privileges, they are still obliged to respect the laws and regulations of the receiving country. In this case, Basfar, as Saudi Arabia's diplomatic staff, did not have good faith to respect British national law and therefore abused his immunity to gain benefits outside the official functions of a diplomatic representative.

Furthermore, when associated with one of the basic theories of granting diplomatic immunity, namely the Theory of Functional Necessity, the British Supreme Court's ruling in this case which stated that the act of modern slavery carried out by Basfar as a diplomatic representative was not protected by diplomatic immunity under Article 31 paragraph 1 (c) of the 1961 Vienna Convention, was in line with this theory. The Theory of Functional Necessity is one of the three basic theories of granting diplomatic immunity that is most recognized and accepted by the international community. This theory explains that diplomatic immunity and privileges are granted to diplomatic representatives not for the benefit of individuals, but to support the effective exercise of diplomatic functions as representatives of their countries.²³ The actions in *Basfar v. Wong*, which Basfar took against Wong had deviated from the performance of the duties and functions of a diplomatic representative, where he had provided financial gain for personal gain by exploiting labor

²² Tasya Rahim, *Op. Cit.*, p. 1172.

²³ Nina M. Bergmar, *Demanding Accountability Where Accountability Is Due: A Functional Necessity Approach to Diplomatic Immunity Under the Vienna Convention*, *Vanderbilt Journal of Transnational Law*, 47 no. 2 (2014): p. 508.

against domestic workers in his residence which was an act outside the official functions of a diplomatic representative.

B. The legal consequences for the parties to the outcome of the British Supreme Court's decision in the case of Basfar v. Wong

1. Legal Consequences for Ms. Josephine Wong

Basfar's diplomatic immunity to the jurisdiction of the court of the receiving country in this case is no longer in question, so the decision of this case can be returned to the Industrial Relations Court to be able to render a judgment on the compensation that Basfar must pay to Wong.²⁴ While this will pave the way for providing compensation for domestic workers, the execution of court rulings that may compensate victims remains an obstacle. As the judge's reasoning in the judgment explained, "If Wong succeeds in the damages suit in the Industrial Relations Court, it may be difficult for him to enforce the damages award against Basfar". This possibility may occur because Basfar as a diplomatic representative can claim that a diplomat has immunity from the execution of the judgment, so in this case he may voluntarily disobey the judgment of the court in the receiving country, in this case the United Kingdom.²⁵ This is based on Article 31 paragraph 3 of the 1961 Vienna Convention which states that the act of execution can be carried out in cases of exemption from diplomatic immunity described in Article 31 paragraph 1 letters (a), (b) and (c) with 2 conditions, namely not violating the personal immunity of the diplomat and the immunity of his residence.

First, the *inviolability of his person*. Personal immunity includes the protection of the physical integrity, freedom of movement, and security of diplomats, whereby a diplomat must not be arrested, detained, or subjected to physical acts by the government authorities of the Receiving State that may restrict his or her freedom. If examined from the content of the article, the execution of the judgment on the payment of compensation for the breach of the contract of domestic workers against a diplomat does not require measures that threaten the physical freedom or mobility of a diplomat such as the arrest or detention of a diplomat. Therefore, the execution of a judgment on the payment of damages is not intended to interfere with the personal liberty of a diplomat so as not to violate the personal immunity guaranteed by Article 29. The second condition to be able to carry out the execution of the verdict is that it must not violate the immunity of the diplomat's residence. This is explained in Article 30 of the 1961 Vienna Convention which explains that the residence of a diplomatic agent cannot be challenged and is protected in the same way as the premise of a diplomatic mission such as an embassy so that it is protected from any form of intervention, seizure, or search by the Receiving State.

Referring to the explanation of the article, the act of executing the payment of material damages in the form of money does not involve the act of confiscating property or interfering with the private residence of the diplomatic representative, therefore the fulfillment of the execution of the judgment on the payment of damages also does not violate the immunity of the diplomat's residence as described in Article 30. On that basis, immunity from execution of a judgment in the court of the receiving country should not be claimed by a diplomat to obstruct legal proceedings, including the fulfillment of the execution of the

²⁴ Rosana Garciandi, *Domestic Servitude and Diplomatic Immunity: The Decision of the UK Supreme Court in Basfar v Wong*, *Industrial Law Journal*, 52 no. 2 (2023): p. 453.

²⁵ Ms. J Wong v. Mr. Khalid Basfar UKSC (2022), *Op. Cit.*, p. 17 para. 50.

judgment, especially if the lawsuit filed is only in the form of monetary damages for the breach of a contract between a diplomat and a domestic worker.

After the British Supreme Court's decision in this case was determined, there is no further information regarding whether the compensation judgment against Wong can be executed by the British Industrial Relations Tribunal (PHI). However, theoretically it should be noted that the implementation or fulfillment of the PHI Decision against the Diplomatic Representative cannot be carried out directly by the British PHI. In this context, the most important role in the implementation or fulfilment of the PHI Decision is in the hands of the executive body, namely the UK Ministry of Foreign Affairs, which acts on the basis of the diplomatic relations between the UK state and the Diplomatic Representative of the sending country. In the execution of the PHI Decision of the Diplomatic Representative, all correspondence documents of the execution of the PHI decision to the Diplomatic Representative must be submitted through the UK Ministry of Foreign Affairs as an extension and are a notice or appeal to be submitted to the sending State.²⁶ The settlement of the payment of compensation to the domestic workers depends on the process and outcome of negotiations as well as good diplomatic relations between the United Kingdom, the Philippines and the Diplomatic Representative of the sending country concerned, which in this case is Saudi Arabia.

2. Legal Consequences for Mr. Khalid Basfar

It is stated in Article 41 paragraph 1 of the 1961 Vienna Convention on Diplomatic Relations, that: "*Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.*" Although diplomatic representatives have diplomatic immunity and privileges, any diplomatic representative representing the sending State shall continue to respect the laws and regulations existing in the receiving State, and shall not interfere in the domestic affairs of the receiving State. If the violation committed is a minor and still tolerable offense such as a traffic violation, the receiving State may issue a reprimand to the diplomatic representative concerned. However, if the crime committed is a serious and intolerable crime, the receiving State may request the sending State to exercise a waiver of immunity and diplomatic privileges (*waiver of immunity*) of diplomatic representatives²⁷ as described in Article 32 of the 1961 Vienna Convention on Diplomatic Relations. International legal experts gave views and recommendations in the *Basfar v. Wong* case, that the *sending State*, namely Saudi Arabia, can be cooperative in resolving this case. Saudi Arabia should cooperate with foreign investigative authorities related to the alleged modern slavery committed by its diplomatic representatives, as well as in executing the verdict against Basfar. Sending countries should also consider waiving the immunity of their diplomats when there are credible allegations of their involvement in modern slavery and gross human rights violations against domestic workers in the territory of the receiving State.²⁸

The Government of Saudi Arabia as the sending country of diplomatic representatives, in this case Khalid Basfar, is obliged to take responsibility for the settlement of this case.

²⁶ Retna Seruni, Legal Certainty of the Execution of Industrial Relations Court Decisions Against Diplomatic Representatives in Indonesia, *Dharmasisya*, 1 no. 4 (2021): p. 2086-2087.

²⁷ Windy Lasut, Calendar of Diplomatic Immunity in Recipient States According to the 1961 Vienna Convention, *Lex Crimen*, 5 no. 4 (2016): p. 87.

²⁸ Philippa Webb dan Rosana Garcandia, *State Responsibility For Modern Slavery: Uncovering and Bridging The Gap*, *International and Comparative Law Quarterly*, 68 no. 2 (2019): p. 568.

This is because Saudi Arabia has fulfilled the theoretical elements that explain the characteristics of the occurrence of state responsibility, namely when the state's actions constitute a violation of international law that has been ratified by Saudi Arabia. In this case, the actions of state organs in their official capacity, namely diplomatic representatives from Saudi Arabia, have no good faith to respect the law and have committed actions contrary to British national law and international law, namely violations of Article 31 paragraph (1) c j.o Article 42 and Article 41 paragraph (1) of the 1961 Vienna Convention on Diplomatic Relations, The Universal Declaration of Human Rights of 1948 in Article 4 is related to the prohibition of slavery, Articles 23-24 are related to the rights of workers to get a decent and fair wage and adequate rest time during work. In addition, Saudi Arabia has also ignored international commitments to the policies of the ILO Convention on Forced Labor 1930 (No. 29) and the Protocol to the ILO Convention on Forced Labor 1930 of 2014 which affirms that ratified member states to prevent acts of forced labor as described in Article 1 paragraph (1), Article 4 paragraph (1) and Article 5.

Then, related to the responsibility of the State of Saudi Arabia to exercise a waiver of immunity, referring to the provisions of Article 32 of the 1961 Vienna Convention which explains the date of immunity from jurisdiction, the date regarding immunity from court jurisdiction and immunity from execution of court decisions are also procedurally separate, this is explained in Article 32 paragraph (4) of the 1961 Vienna Convention which states: "Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary." The article explains that the date of legal immunity from jurisdiction in civil and administrative cases is not considered as a date of legal immunity in terms of the execution of judgments, for which a separate immunity date is required.²⁹

In fact, in most cases when the receiving State asks the sending State to waive the diplomatic immunity and privileges of its diplomats, the sending State tends to refuse to grant the request of the receiving State and seeks to protect their diplomat even if its diplomatic officials commit wrongdoing in the receiving State. Therefore, one of the alternatives that the UK Foreign Office and the worker can take to obtain rights under the PHI Decision against the Diplomatic Representative is to file a report through an international organization, namely the International Labour Organization (ILO). This move is expected to put pressure internationally on the sending countries.

The ILO was established by the United Nations to be a forum for countries in the world to discuss and set the same working standards. The main task of the ILO is to supervise its member countries in order to provide decent employment opportunities to their citizens, protecting the rights of workers, including migrant workers and children. In addition, the ILO also acts as a mediator in international labour conflicts and encourages dialogue between governments, workers, and employers to create better employment policies around the world. The ILO acts as a bridge between countries on employment issues. The ILO not only sets employment rules internationally, but also helps resolve disputes between member states. The ILO can be a forum for governments, workers, and employers to discuss and find solutions together in creating a fair and decent world of work. However, keep in mind that the ILO Recommendations are not *legally binding*, so the ILO does not have the

²⁹ Eileen Denza, *Diplomatic Law: Commentary on The Vienna Convention on Diplomatic Relations* (Oxford: Oxford University Press, 2016), p. 286.

authority to take coercive action against sending countries that refuse to implement the PHI Decision on Diplomatic Representatives. International sanctions, such as the severance of diplomatic relations or embargoes, are rarely applied in these kinds of cases. Therefore, the UK needs to find the right solution to protect the rights of workers working in its territory without damaging bilateral relations with Saudi Arabia.³⁰ If the settlement of the case through the ILO does not reach a consensus between the parties to the dispute, other alternative settlements related to the payment of compensation that must be provided by Basfar to Wong can also be carried out through a non-litigation process (*out-of-court settlement*) such as the mediation method that has been applied in several countries in resolving employment cases involving diplomatic representatives.

In Austria, the Protocol Department of the Austrian Ministry of Foreign Affairs has an obligation, one of which is to mediate for diplomatic representatives and domestic workers to reach an agreement in employment cases. In 2014, two domestic workers fled a diplomat's home in Vienna and sought refuge in the organization supporting victims of slavery, LEFÖ – IBF. They claimed that, for three months, they received less than half the wages they should have received under the terms of the employment contract, as well as complaining of excessive hours worked.

Through questionnaires sent to LEFÖ and the diplomat's embassy, the Austrian Foreign Ministry identified a gap between the wages paid and those promised. Based on the agreement of the parties, mediation efforts were made with the Protocol Department of the Austrian Ministry of Foreign Affairs as a mediator until a few weeks later a compromise was finally reached. LEFÖ (on behalf of a private domestic worker) and the employer sign an out-of-court settlement agreement. As a result, a compensation amount of €8,000 was awarded to the domestic worker to settle all remaining claims from their employment contract and the diplomat was able to continue to perform his duties. Thus, a relatively quick solution was achieved without the need for intervention from lawyers and relatively expensive court costs.³¹ Furthermore, based on the provisions of diplomatic law, the last action that can be taken by the receiving State to solve the problem of the sending State that is unwilling to cooperate in the exercise of diplomatic immunity and tends not to take any steps to sanction and instead protect its diplomatic representatives from law enforcement efforts in the case of modern slavery is to provide diplomatic sanctions in the form of declarations *Persona non grata* against diplomatic representatives who have abused their immunity and diplomatic privileges to leave the territory of the jurisdiction of the receiving country and return to their country.³²

In the British Supreme Court's decision in *Basfar v. Wong*, the majority of the judges also considered that the legal consequence/consequence of Basfar's actions that he had committed modern slavery by exploiting Wong's labor so that he could gain financial gain and therefore could be categorised as an exception to immunity from civil jurisdiction of the court was that the recipient State had the right to declare *persona non grata* status to the diplomatic representative concerned. This action is clearly contrary to the dignity and dignity of a diplomat, considering that the act committed is outside his official duties and is

³⁰ Retna Seruni, *Op. Cit.*, p. 2088-2089.

³¹ OSCE (Organization for Security and Co-operation in Europe), *How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers* (Vienna: OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2014), p. 46-47.

³² *Ibid*, p. 51.

considered an act of dishonor.³³ Based on Article 9 of the 1961 Vienna Convention on Diplomatic Relations, a *declaration of persona non grata* must be declared by the *receiving State*, which in this case is the United Kingdom. The actions taken by Khalid Basfar have also fulfilled one of the requirements of the basis for the enforceability of *persona non grata* against diplomatic representatives. One of the grounds for granting a *persona non grata* declaration is if a diplomatic representative violates the laws and regulations of the receiving country.³⁴ In the case of *Basfar v. Wong*, Khalid Basfar's actions as the diplomatic representative of Saudi Arabia had violated the British national law, namely the *National Minimum Wage Act 1998* and *The Working Time Regulations 1998 Number 1833 Terms and Conditions of Employment*.

Procedurally, if the receiving country has declared *persona non grata* sanctions, the sending country should recall its diplomatic representative to the country of origin. The purpose of this recall is to maintain and maintain good relations between the two countries. In accordance with the provisions of international law, the receiving country has the right to request that the sending country withdraw its diplomatic representatives. This action generally indicates a deterioration in bilateral relations between the two countries. In addition, the withdrawal of a diplomat can also be carried out if the diplomat is no longer accepted by the receiving country or has committed acts that are detrimental to the country.

A declaration of *persona non grata* has legal consequences that require the diplomatic representative concerned to leave the territory of the recipient country within a predetermined time, so the diplomat is obliged to return immediately to his or her country of origin. Although a diplomatic representative has immunity from the jurisdiction of the court of the receiving country, this does not mean that the actions of the Saudi Arabian diplomatic representative against Wong in this case can be left without any consequences or sanctions. Article 31 paragraph (4) of the 1961 Vienna Convention states that: "*The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.*" The article has made it clear that the diplomatic immunity from the court jurisdiction of the receiving State granted to diplomatic representatives does not exempt them from the jurisdiction of the sending State.³⁵ Therefore, diplomatic representatives should remain subject to the legal jurisdiction of the sending State, in which case Saudi Arabia should take measures to punish Basfar in accordance with Saudi Arabia's national law.

CONCLUSION

The ruling in this case has determined that Khalid Basfar, as the diplomatic representative of Saudi Arabia, is not protected from immunity from immunity from the jurisdiction of the court of the receiving State based on the exception of diplomatic immunity in Article 31 paragraph 1 letter c of the 1961 Vienna Convention. Basfar as Saudi Arabia's diplomatic staff has abused its diplomatic immunity by committing violations of British national law, namely the UK National Minimum Wage Act and the Working Hours and Terms and Conditions of Employment Act in the UK as well as other international legal instruments, namely the 1961 Vienna Convention on Diplomatic Relations, the Universal Declaration of Human Rights of 1948 and the ILO Convention on Forced Labour 1930

³³ Ms. J Wong v. Mr. Khalid Basfar UKSC (2022), *Op. Cit.*, p. 21-61.

³⁴ S.M. Noor, et.al., *Hukum DiplomatiK dan Hubungan Internasional* (Makassar: Pustaka Pena Press, 2016), p. 181.

³⁵ Komang Sukaniasa, et.al., Abuse of the Right to Diplomatic Immunity Reviewed from the 1961 Vienna Convention (Case Study of Persecution of Indonesian Migrant Workers by Saudi Arabian Diplomatic Officials in Germany, *e-Journal of the Judicial Community of the Ghana University of Education*, 4 no. 2 (2021): p. 163.

(Number 29) and the Protocols ILO Convention on Forced Labor 1930 of 2014. Based on the results of the British Supreme Court's decision, the legal consequence for Josephine Wong as a victim of modern slavery is to get compensation from Khalid Basfar as the perpetrator of the act. However, the execution of the court decision that will compensate Josephine Wong is still an obstacle based on the claim of Article 31 paragraph (3) of the 1961 Vienna Convention. The government of Saudi Arabia as Khalid Basfar's home country must be responsible for resolving this case. The 2 (two) legal consequences of the abuse of diplomatic immunity committed by Khalid Basfar against Josephine Wong which have been regulated in the 1961 Vienna Convention, namely the expiration of Basfar's diplomatic immunity which must be carried out by the sending State and the sanction of *declaration persona non grata* by the receiving State. Another alternative in this case, to be able to achieve the payment of damages to Wong that can be reached is through international organizations such as the ILO in order to exert pressure at the international level for the sending country. If an agreement has not been reached, the settlement of the case can be carried out through a non-litigation process such as mediation efforts that must be facilitated by the UK Foreign Office. If the two efforts have not reached an agreement, the UK as the recipient State can impose diplomatic sanctions in the form of a *persona non grata* declaration against Khalid Basfar for his actions that have met the criteria for abuse of diplomatic immunity so that he must leave the UK and return to his country as stipulated in the 1961 Vienna Convention on Diplomatic Relations.

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