

# Juridical Review Appointment of Honorary Consul by the Government of Indonesia

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**ABSTRACT**--*Consular relations as a form of inter-state relations are regulated in the 1963 Vienna Convention on Consular Relations and has been ratified by the Government of Indonesia with Law No. 1 of 1982. According to the 1963 Vienna Convention consular officers are divided into two categories, that is career/permanent consular officials and consul officials honor. The rights of immunity and privileges of honorary consul officials even though they are automatically attached to them, but the implementation of granting immunity to honorary consuls has not been regulated in detail by international law, especially in international conventions. This is a logical consequence of the absence of the same definition according to the law in each country. The purpose of this research is to find out the regulation of the honorary consul in Indonesian national law and its practice in Indonesia. This type of research is a normative juridical study with a statutory approach. The data source in this study is secondary data in the form of literature data which includes national legislation, international conventions, and other related documents. Based on the results of research and discussion it can be concluded that the arrangement of honorary consuls in national law is contained in Minister of Foreign Affairs Regulation number 1 of 2014 which specifically regulates Honorary Consuls. In practice, Indonesia has appointed 64 honorary Consuls in various countries.*

**Keywords:** *Consular honors, insusceptibility rights, privileges*

## I. INTRODUCTION

### I. Research Background

The development of international relations began from the birth of countries in the world because a country cannot survive without the assistance or cooperation of other countries and it feels very loss if a country closes the opportunity for other countries to cooperate with it. The consular institution was there before the diplomatic institution. Consular institutions have even existed since ancient Greece, where trade activities began to develop rapidly in city-states. Greece was the country where consular institutions were born. At that time the term *proxenia* was known as a kind of state official (prominent citizen) who served and was responsible for foreign residents residing in a city-state.[8] In Roman times the term *consul* was known as the special judge of foreign merchants in the 13th century. The existence of consular representatives at that time had a fairly extensive function in which the consuls had civil and criminal authority over their citizens.[8]

The modern system of the consul institution only began in the 16th century. In the 18th century, the function of consular representation had undergone various adjustments so that it was not much different from the function of the modern consular representative that is known at this time,

that is managing various trade, transportation, and citizens their country.[1]

International law governing relations between countries originates from customary law which can be found in the practice of implementing international relations, even long before the term international law. After going through a variety of lengthy processes, these customary practices are codified in the form of written regulations to the form of conventions known today, the 1961 Vienna Convention on Diplomatic Relations (Vienna Convention on Diplomatic Relations 1961) and the Vienna Convention on Consular Relations 1963 (Vienna Convention on Consular Relations 1963). The two conventions were followed by additional protocols, and also various supporting conventions related to the conventions. Supporting conventions in question include the Convention on Special Mission in 1969 and the Convention on Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Internationally protected including Diplomats) in 1973.

Interstate relations, in general, are divided into two institutions that is diplomatic institutions and consular institutions. Consular institutions already existed before diplomatic institutions. Both of them take care of relations between countries outside national jurisdiction whose implementation is sourced from international customs. The difference between the two is that diplomatic institutions take care of political matters, while consular institutions take care of non-political (non-political) fields. The two institutions still have tangents, because in practice between the affairs of diplomatic representatives and consular representatives there is often confusion.[8]

The Republic of Indonesia in practice is in addition to opening diplomatic relations, also opening consular relations. In addition to career consul, Indonesia has also appointed 64 honorary consuls. After the opening of consular relations, it is usually followed by the opening of consular offices and the appointment of consular officials in practice carrying out consular relations functions.

The 1963 Vienna Convention does not clearly define the boundaries and differences between career consular officials and honorary consul officials but

in general, there are four main differences between the two, that is:[8]

1. Career consul is a permanent employee of a sending country, appointed from a sending country citizen and a permanent employee of the sending country's foreign ministry. Whereas Honorary Consuls are usually not appointed from sending citizens, but rather are appointed from recipient citizens or third party citizens so that they can work as employers and are not permanent employees of sending countries. Career consuls receive salaries, benefits, and pensions from sending countries, while honorary consuls receive only honoraria.
2. Career consuls pay taxes to sending countries in the context of fulfilling their official duties. Consuls with career status may not carry out other duties (side businesses) except those assigned to them. The honorary consul pays taxes to the recipient country and the honorary consul may carry out other professions in addition to assisting consular representatives sending countries
3. Career consul and their relatives who meet the requirements to obtain immunity and privileges in the recipient country, while the honorary consul and his family do not obtain immunity and privileges.
4. The exchange and/or delivery of consular bags between two consular-consular representative offices led by officials with honorary consul status is not permitted unless an agreement has been reached between the consular recipient countries. Whereas for representatives led by career consuls, exchanges with such patterns are not a problem.

Indonesia has appointed 64 honorary consuls who are stationed throughout the world. Indonesian national law also regulates the appointment of honorary consuls. The appointment of the honorary consul is determined by a Presidential Decree on the proposal of the Minister of Foreign Affairs based on a recommendation from the Secretary-General of the Ministry of Foreign Affairs, this is based on Article 5 paragraphs 1 and 2 of Minister of Foreign Affairs Regulation No. 1 of 2014 concerning Honorary Consuls of the Republic of Indonesia..

## II. RESEARCH PROBLEMS

1. What are the duties and functions of the honorary consul in international law?
2. What are the considerations of the Government of Indonesia in the appointment of Honorary Consul?

## III. RESEARCH METHODS

This study uses a normative juridical method with a statute approach, that is research conducted by studying library materials (literature study). Library data in the form of secondary data sourced from international conventions, laws and regulations, literature books and related documents. The statute approach studies the consistency and compatibility between international conventions and national legislation and related documents, which are supplemented with literature books.[5] In this case, the legislative approach is an approach that emphasizes legislation and regulation.[2]

## IV. DISCUSSION

Indonesian consular officials, both at the Ministry of Foreign Affairs and representatives of the Republic of Indonesia who provide services and resolve consular issues are required to have professionalism (knowledge, mastery, and skills in the field of law). This means that consular officials must thoroughly understand the legal basis and consular procedures.[10] The duties and functions of Indonesian consular officials both at the Ministry of Foreign Affairs and those in the Republic of Indonesia's overseas representatives are as follows:[10]

1. Issuing passports and travel documents to Indonesian citizens and visas for foreign nationals who intend to travel to Indonesia;
2. Performing the function of protecting Indonesian citizens and Indonesian legal entities;
3. Acting as a notary public and civil registration office or other administrative duties as long as they do not conflict with the laws and regulations of the recipient country;
4. Accompanying and representing Indonesian citizens who are not old enough, less able, or in certain conditions declared unable, who are involved in cases or legal cases;
5. Forwarding court documents and documents outside the court or carrying out statements or power of attorney to retrieve information from the court of the sending country in accordance with applicable international treaties or by other means in accordance with laws and regulations, if an international agreement thus does not exist;
6. Carry out the function of supervision and protection of Indonesian-flagged ships or aircraft registered in Indonesia and the crew concerned;
7. Carry out other functions entrusted to consular representatives as long as they do not conflict with the laws and regulations of the recipient country.

Based on the above provisions, the most important task of the honorary consul is to assist the implementation of some of the tasks and functions of the representative who carries it out in a particular work area in the recipient country. Some of the tasks of this representative include protection of sending citizens and legal entities of sending countries in receiving countries, enhancing relations and cooperation in the economic and socio-cultural fields, economic promotion, trade, tourism, investment, labor and services, promotion of social culture, and observation and reporting.

The classification or level of heads of consular representatives themselves is regulated in Article 9 of the 1963 Vienna Convention. Based on that article, the heads of consular representatives consist of: [1]

- a. Consul General;
- b. Consul;
- c. Deputy consul (young consul);
- d. Consular agent (consular officer).

Meanwhile based on Presidential Decree Number 108 the Year 2003 Regarding Overseas Indonesian Representative Organizations, the types of representation are contained in Article 2 as follows:

1. Representatives consist of:
  - a. Diplomatic Representative;
  - b. Consular Representative.
2. The Diplomatic Representative referred to in paragraph 1 letter a, includes:
  - a. Embassy of the Republic of Indonesia;
  - b. Permanent Mission of the Republic of Indonesia.
3. Consular Representative referred to paragraph (1) letter b, includes:
  - a. Consulate General of the Republic of Indonesia;
  - b. Consulate General of the Republic of Indonesia;

On the other hand, honorary consular representatives, the classification of consular representative heads is divided into two that is:[11]

1. Honorary Consul General
2. Honorary Consul

When compared with Article 5 of the 1963 Vienna Convention which regulates the functions of consular representation, Indonesian national law regulates the functions of consular representation more concisely, but must still be in accordance with the 1963 Vienna Convention because basically the regulation on consular functions in Indonesian national law still refers to the Vienna Convention 1963.

The notion of honorary consul is contained in Presidential Decree (Keppres) No. 108/2003

concerning Overseas Representative Organizations of the Republic of Indonesia. According to Article 1, number 14 of Presidential Decree Number 108 Year 2003, the definition of honorary consul is the recipient citizen who was appointed by the President at the proposal of the Minister of Foreign Affairs who has certain qualifications to carry out the consular function and/or promotion function in the territory of the recipient country. The above understanding is not much different from the understanding of the honorary consul in Minister of Foreign Affairs Regulation No. 1 of 2014 concerning Honorary Consuls of the Republic of Indonesia. According to the Minister of Foreign Affairs Regulation, the honorary consul is a citizen of the recipient country, who was appointed by the President at the proposal of the Minister of Foreign Affairs who has certain qualifications to carry out certain duties and functions in the recipient country.

Granting immunity rights and privileges of honorary consuls are contained in Article 12 of the Minister of Foreign Affairs Regulation No. 1 of 2014 concerning Honorary Consuls of the Republic of Indonesia which states:

Privileges and privileges can be given to honorary consuls in accordance with Indonesian law, international law, and customs as well as the legislation of the recipient country.

Based on Article 12 above, the granting of the immunity rights and privileges of the Honorary Consul of the Republic of Indonesia is based on Law Number 1 of 1982 which has ratified the 1961 Vienna Convention and the 1963 Vienna Convention along with optional protocols from each of the conventions.[4]

Honorary consul officials are not citizens of the sending country, but citizens of the receiving country who are appointed by the sending country to head a consular post. As a citizen receiving an honorary consul, he cannot enjoy the same immunity and privilege rights as a career consul.[7] Based on this explanation, the granting of the right of immunity to the honorary consul follows the provisions of Chapter III of the 1963 Vienna Convention, which Indonesia had ratified by Law No. 1 of 1982.

Insusceptibility rights and privileges of honorary consuls are regulated in Article 6 of Minister of Foreign Affairs Regulation No. 1 of 2014, which is written as follows:

Privileges and privileges can be given to honorary consuls in accordance with Indonesian law, international law and customs and the legislation of the recipient country.

Based on the above provisions, the granting of the right of immunity and privileges to the honorary consul in Indonesian national law can be granted to the honorary consul. Indonesian national law regulating this is Law Number 1 of 1982 concerning

Ratification of the Vienna Convention on Diplomatic Relations 1961 along with its Optional Protocol on the Obtaining of Citizenship (Vienna Convention on Diplomatic Relations and Optional Protocol to the Vienna Convention on Diplomatic Relations regarding Acquisition of Nationality ) and Ratification of the Vienna Convention on Consular Relations and its Optional Protocol on Obtaining Citizenship 1963 (Vienna Convention on Consular Relations and the Optional Protocol to the Vienna Convention on Consular Relations concerning the Acquisition of Nationality). Both conventions and their optional protocols have been ratified by Law No. 1 of 1982. This means that the granting of the right of immunity and privileges to the honorary consul is based on that law.

Indonesian national law also regulates the appointment of honorary consuls. Article 5 (1) and (2) Regulation of the Minister of Foreign Affairs No. 1 of 2014 About the Honorary Consul of the Republic of Indonesia states that the appointment of the honorary consul is determined by a Presidential Decree on the proposal of the Minister of Foreign Affairs based on a recommendation from the Secretary General of the Ministry of Foreign Affairs. Also in Article 6 (1) Regulation of the Minister of Foreign Affairs Number 1 of 2014 concerning Honorary Consuls of the Republic of Indonesia describes that the considerations underlying the appointment of honorary consul are as follows:

1. The absence of a Representative of the Republic of Indonesia in the city where the honorary consul is domiciled;
2. There is a real need to appoint honorary consuls in certain work areas in the recipient country;
3. Supporting the achievement of the Vision and mission of the Representative in the work area of the honorary consul;
4. Number of Indonesian citizens and Indonesian legal entities that are in the work area of the Honorary Consul;
5. Has the potential for cooperation with Indonesia in the fields of economy, trade, investment, tourism, services, labor and social culture; and
6. The written application in question (Representative of the local Republic of Indonesia).

Honorary Consul in Indonesian national law has a term of office. The term of office is contained in Article 8 of Minister of Foreign Affairs Regulation Number 1 of 2014, that is:

1. Honorary Consul's term of service is 5 (five) years;
2. The Minister of Foreign Affairs of the Republic of Indonesia shall determine the term of office of the honorary consul as from the date of stipulation of the Presidential Decree.

Honorary Consuls in practice in Indonesia do not get a salary or honorarium. This is regulated in Article 22 paragraph 1 of the Regulation of the Minister of Foreign Affairs of the Republic of Indonesia Number 1 of 2014.

## V. CONCLUSION

1. Regulations governing Honorary Consuls in Indonesia, that is the 1963 Vienna Convention, Law No. 1 of 1982 and the Regulation of the Minister of Foreign Affairs of Indonesia Number 1 of 2014, and Presidential Decree Number 108 of 2003 paragraph (1) letter b.
2. The duties and functions of the Honorary Consul are:
  - a. Issuing passports and travel documents to Indonesian citizens and visas for foreign nationals
  - b. Protect Indonesian citizens and Indonesian legal entities
  - c. Acting as a notary and civil registration officials and other administrative tasks
  - d. Accompany and represent Indonesian citizens who are declared incompetent to take legal action
  - e. Forwarding court documents and documents outside the court to retrieve information from the court of the sending country
  - f. Carry out supervision and protection of Indonesian-flagged ships or aircraft registered in Indonesia and the crew concerned
  - g. Carry out other functions entrusted to Indonesian consular representatives.
3. The Indonesian Government's considerations underlying the appointment of the honorary consul were Indonesia's national interests in international relations including: the absence of a Representative of the Republic of Indonesia in the city where the honorary consul was domiciled, the real need to appoint honorary consuls, cooperation in the fields of economy, trade, investment, services, labor, and socio-cultural.
4. In practice, Indonesia has opened 64 honorary consular representatives in several countries, including: Hawaii-USA, Bremen-Germany, Hanover-Germany, Kiel-Germany, Dusseldorf-Germany, Munchen-Germany, Baden-Germany, Antwerp-Belgium, Auckland-New Zealand, Adelaide-Australia, and Brisbane-Australia.

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