

The Limits of Indonesia's Diplomatic Protection Obligations for Citizens Involved in Transnational Crimes in Cambodia: A Normative Analysis

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Abstract

This study examines the limits of Indonesia's obligation to provide diplomatic protection to Indonesian citizens (WNI) involved in transnational criminal cases in Cambodia. Using a normative legal approach with a conceptual perspective, this research analyzes the ILC Draft Articles on Diplomatic Protection (2006), the Vienna Convention on Consular Relations (1963), the UN Convention Against Transnational Organized Crime (Palermo Convention 2000), and Indonesia's national legal framework, including Law No. 37 of 1999 on Foreign Relations and Law No. 21 of 2007 on the Eradication of Human Trafficking. The findings indicate that Indonesia's protection obligations operate within three distinct levels: absolute consular obligations applicable to all detained nationals regardless of legal status; conditional protection in situations involving imminent danger; and discretionary diplomatic protection, which depends on state policy considerations and may be limited by the clean hands doctrine and Indonesia's obligations under the Palermo Convention when nationals are active perpetrators of transnational crimes. Normative gaps in the domestic implementation of the Palermo Protocol further complicate the categorization of Indonesian citizens as victims or perpetrators. The novelty of this research lies in proposing a three-tier analytical framework of state protection obligations absolute, conditional, and discretionary which clarifies the legal boundaries of diplomatic protection in cases where nationals are simultaneously involved in transnational criminal networks. These findings highlight the need for regulatory harmonization and clearer institutional coordination to ensure a coherent and accountable state response in protecting Indonesian citizens abroad.

INTRODUCTION

Globalization has brought about fundamental changes in the international crime landscape. The ease of human mobility, the expansion of digital communication networks, and the openness of economies across borders have not only opened opportunities for productive cooperation but also created loopholes that are increasingly exploited by organized crime networks operating beyond national borders. Transnational crimes including human trafficking, cyber fraud, money laundering, and organ trafficking have evolved into some of the most complex security threats faced by the international community today. In this context, the vulnerability of citizens outside their national borders becomes a critical legal issue that demands adequate protection mechanisms from their home states.¹

Indonesia, as a country with more than 270 million people and one of the largest labor-sending countries in Southeast Asia, consistently faces challenges in protecting its citizens abroad. Diplomatic and consular protection for Indonesian citizens (WNI) has long been an integral component of Indonesia's foreign policy and constitutional obligation, as reflected in the mandate of the 1945 Constitution and operationalized through Law No. 37 of 1999 on Foreign Relations.² However, this protective obligation does not operate in isolation; it is embedded within the framework of international law, which imposes normative limitations on the exercise of diplomatic protection by states.³

In recent years, Cambodia has emerged as one of the most prominent hotspots of transnational crime involving Indonesian citizens. Reports from the Indonesian Ministry of Foreign Affairs, international organizations, and several academic studies indicate a significant increase in the number of Indonesian citizens entangled in organized criminal operations in Cambodia, particularly in special economic zones that often operate with limited legal oversight.⁴ Complicating this phenomenon is the emergence of a dual role among some Indonesian citizens, who initially enter Cambodia as victims of recruitment fraud or human trafficking but later become involved as active participants within the same criminal networks due to coercion, dependency, or voluntary participation.

This duality of victim-perpetrator roles creates a complex legal dilemma for Indonesia. On the one hand, the state has a constitutional and humanitarian

¹ John Dugard, "Diplomatic Protection," in *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2006).

² Undang-Undang, "Undang-Undang Nomor 37 Tahun 1999 Tentang Hubungan Luar Negeri" (1999).

³ International Law Commission, "Draft Articles on Diplomatic Protection with Commentaries UN Doc. A/61/10" (2006).

⁴ Fitri Hardianti; Solicha and Wijayanti Asri, "Perlindungan Hukum Terhadap Pekerja Atas Alat Pelindung Diri," *Wijayakusuma Law Review* 2, no. 1 (2020): 23-37, <https://doi.org/10.51921/af41a146>.

responsibility to protect its citizens abroad, particularly those who are vulnerable or exploited. On the other hand, Indonesia must also comply with its international obligations to combat transnational organized crime under the United Nations Convention against Transnational Organized Crime (Palermo Convention 2000), which requires states to cooperate in suppressing criminal networks rather than shielding their members.⁵ The tension between these two obligations protection of nationals and cooperation in combating transnational crime creates a normative grey area that has not yet been clearly articulated within Indonesia's national legal framework.

From the perspective of international law, diplomatic protection is understood as a mechanism through which a state invokes the international responsibility of another state for injuries suffered by its nationals. The International Law Commission (ILC) Draft Articles on Diplomatic Protection (2006) codify several key principles governing this mechanism, including the nationality requirement, the principle of exhaustion of local remedies, and the discretionary nature of diplomatic protection.⁶ In addition, doctrinal discussions have highlighted the relevance of the clean hands doctrine, which may limit a state's ability to advance claims on behalf of nationals who themselves have engaged in unlawful conduct connected to the dispute.⁷

Although the protection of Indonesian citizens abroad has been widely discussed in academic literature, most existing studies focus primarily on diplomatic practice, foreign policy strategies, or the general legal framework of citizen protection, without examining the normative limits of such protection when the citizen concerned is involved in criminal activities abroad. For example, Benito & Dedi (2024) *Efforts To Counter The Crime Of Trafficking In Persons Within The Scop* in protecting Indonesian citizens abroad but does not address the legal implications when the citizen being protected is simultaneously a criminal suspect or defendant.⁸ Similarly, Lubis (2025) evaluates Indonesia's diplomatic protection policy from a governance perspective but does not explore the doctrinal limitations of diplomatic protection under international law when the individual

⁵ Aulia Dwi Salmah Ginting and Atikah Rahmi, "The Implementation of Article 7 of the Palermo Protocol in Law Number 21 of 2007: An Analysis of the Compatibility of International Legal Norms with the Protection of Victims of Human Trafficking in Indonesia," *JHSS: Journal of Humanities and Social Studies* 10, no. 1 (2026): 1-12.

⁶ Dugard, "Diplomatic Protection."

⁷ Mansur Armin and Bin Ali, "Status Personal Dalam Rezim Hukum Perdata Internasional," *Mataram Journal of International Law* 1, no. 1 (2023): 88-95.

⁸ Benito Asdhie Kodiyat MS and Dedi Kurniawan, "Efforts To Counter The Crime Of Trafficking In Persons Within The Scope," *Buletin Konstitusi* 5, no. 2 (2024): 1-21.

concerned participates in transnational crime.⁹ Studies focusing on human trafficking cases in Cambodia, such as Sitinjak et al. (2025), tend to emphasize victim protection and the dynamics of trafficking networks, yet they rarely analyze the legal consequences when victims later transform into perpetrators within the same criminal structure.¹⁰

Consequently, existing scholarship has largely overlooked the normative question of how far a state's obligation to protect its citizens extends when those citizens are themselves implicated in transnational crimes. This gap is particularly significant in the context of Indonesian citizens involved in criminal operations in Cambodia, where the boundary between victim and perpetrator is often blurred. Addressing this gap is essential for developing a coherent legal framework that balances the state's duty to protect its nationals with its international obligations to combat organized transnational crime.

This study therefore aims to construct a normative framework concerning the limits of Indonesia's diplomatic protection obligations toward Indonesian citizens involved in transnational crimes in Cambodia. By analyzing the intersections and tensions between relevant international legal instruments including the ILC Draft Articles on Diplomatic Protection (2006), the Vienna Convention on Consular Relations (1963), and the Palermo Convention (2000) as well as Indonesia's national legal framework, this research seeks to identify normative gaps and propose legal harmonization strategies. In doing so, the study contributes both theoretically to the development of diplomatic protection law and practically to policy discussions on the protection of Indonesian citizens in increasingly complex transnational crime scenarios.

METHODS

This research employs a normative legal research method, namely research that relies on the study of legal norms contained in legislation, international legal instruments, and legal doctrines and principles developed in academic literature. The focus of this research is to analyze the limits of Indonesia's diplomatic protection obligations towards Indonesian citizens (WNI) involved in transnational crimes abroad, particularly in Cambodia, from the perspective of international law and Indonesian national law.¹¹

⁹ Mhd Teguh Syuhada Lubis, "Criminal Imposition of Environmental Crimes," *IJRS: International Journal Reglement & Society* 4, no. 3 (2023): 278–87.

¹⁰ Anugrah Partogi Sitinjak et al., "Perdagangan Organ Di Kamboja: Dinamika Tindak Pidana Perdagangan Orang Dalam Kejahatan Transnasional," *Jurnal Ilmiah Wahana Pendidikan* 11, no. 11 (2025): 1–8.

¹¹ Abdulkadir Muhammad, "Hukum Dan Penelitian Hukum," *LAW REFORM* 8, no. 1 (2004): 134, <https://doi.org/10.20961/hpe.v6i2.1769>.

This study adopts a statue approach, examining fundamental concepts in public international law, including diplomatic protection, consular protection, the clean hands doctrine, the principle of exhaustion of local remedies, and the discretionary nature of state action in pursuing interstate claims. Through this conceptual approach, the study develops a theoretical framework to distinguish between absolute obligations, conditional obligations, and discretionary rights of states in the context of protecting citizens abroad.

The legal materials used in this research consist of primary and secondary legal materials. Primary legal materials include relevant international and national legal instruments, namely the *International Law Commission Draft Articles on Diplomatic Protection* (2006), the *Vienna Convention on Consular Relations* (1963), the *United Nations Convention against Transnational Organized Crime (Palermo Convention 2000)*, Law Number 37 of 1999 concerning Foreign Relations, and Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking.¹²

Secondary legal materials include scholarly literature in the form of books, national and international journal articles, relevant international court decisions, and official commentaries issued by the International Law Commission (ILC) regarding the Draft Articles on Diplomatic Protection. These materials are used to support doctrinal analysis and to examine the development of legal interpretation and state practice in the field of diplomatic protection.¹³

The collection of legal materials was conducted through library research, by systematically identifying and reviewing relevant legal documents, academic publications, and international legal instruments related to diplomatic protection and transnational crime.

The legal materials were then analyzed using qualitative normative analysis. The analysis was carried out through several stages. First, the study identifies and examines applicable legal norms (*ius constitutum*) contained in both international legal instruments and Indonesian national legislation. Second, the research employs systematic interpretation to analyze the interrelationship between domestic legal provisions—particularly Law No. 37 of 1999 on Foreign Relations—and relevant international legal frameworks such as the Palermo Convention and the Vienna Convention on Consular Relations. Through this approach, the study evaluates how Indonesia's national legal

¹² Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2016).

¹³ Amir Hamzah, *Metode Penelitian Studi Kasus: Single Case, Instrumental Case, Multicase Dan Multisite* (Malang: Literasi Nusantara Abadi, 2020).

obligations to protect its citizens abroad are positioned within the broader system of international law.

Third, the research applies teleological interpretation to understand the objectives and underlying purposes of these legal instruments, especially the protection of human dignity and the suppression of transnational organized crime. This interpretative approach is used to assess whether Indonesia's legal framework adequately balances the state's duty to protect its citizens with its international obligations to cooperate in combating transnational crime.

Through these analytical techniques, the study evaluates the consistency, interaction, and potential normative gaps between international legal norms and Indonesian national law, particularly in determining the limits of diplomatic protection obligations toward Indonesian citizens involved in transnational criminal activities abroad.

RESULTS AND DISCUSSION

1. Regulations and Limits of Diplomatic Protection Obligations in International Law and Indonesian National Law

Diplomatic protection in modern international law is defined by the International Law Commission (ILC) in the *Draft Articles on Diplomatic Protection (2006)* as the invocation by a state, through diplomatic action or other peaceful means, of the responsibility of another state for injuries caused to its nationals.¹⁴ This definition highlights three essential elements: diplomatic protection operates at the interstate level, requires a genuine link of nationality, and ultimately represents the assertion of the protecting state's own rights, as established in the *Mavrommatis Palestine Concessions Case* (1924).

An important doctrinal aspect is that diplomatic protection is not an absolute obligation, but rather a discretionary right of the state. Article 2 of the ILC Draft Articles explicitly states that a state *is entitled to exercise diplomatic protection*, not obliged to do so. The accompanying commentary confirms that the decision to bring an international claim remains within the sovereign discretion of the state. In addition, the principle of exhaustion of local remedies requires that injured nationals must first pursue legal remedies in the host state before diplomatic protection can be invoked.

Another limitation frequently discussed in international legal doctrine is the clean hands doctrine, derived from the principle *ex dolo malo non oritur actio* (no action arises

¹⁴ A.A. Ratih & I Ketut Westra Saraswati, "Perjanjian Nominee Berdasarkan Hukum Positif Indonesia," *Kertha Semaya: Jurnal Ilmu Hukum*, no. 4(2) (2018): 1-15.

from one's own wrongdoing).¹⁵ In the context of diplomatic protection, this doctrine implies that a state may lose its standing to advance claims if its nationals have themselves engaged in unlawful conduct directly connected to the dispute. Although the ILC did not formally codify this doctrine due to debates regarding its customary status, it remains influential in legal scholarship and arbitral practice.¹⁶

In the context of Indonesian citizens involved in transnational crimes in Cambodia, the relevance of the clean hands doctrine becomes particularly apparent. When Indonesian nationals actively participate as perpetrators in activities such as online fraud operations, human trafficking recruitment, or organ trafficking networks, Indonesia faces significant legal limitations in advancing diplomatic protection claims on their behalf. Lubis emphasizes that criminal liability cannot be separated from intentional unlawful conduct, and therefore legal protection claims made on behalf of individuals who voluntarily participate in criminal acts will face inherent normative obstacles.¹⁷

Furthermore, the exercise of discretion in handling legal cases must be rational, accountable, and proportionate. Studies on law enforcement discretion emphasize that such authority must not be applied arbitrarily but must consider the interests of multiple stakeholders and broader legal obligations. This principle is also relevant in foreign policy decision-making: Indonesia must balance its obligation to protect its citizens with its international commitments to combat transnational organized crime.

Within the Indonesian national legal framework, the protection of citizens abroad is primarily regulated by Law No. 37 of 1999 concerning Foreign Relations. Article 19(a) requires Indonesian diplomatic and consular missions to provide protection, legal assistance, and guidance to Indonesian citizens abroad in accordance with national legislation and international law. Article 21 further obliges Indonesian representatives to take emergency measures, including evacuation and repatriation, when citizens face imminent danger.¹⁸

However, these provisions do not create unlimited protection obligations. The phrase "in accordance with international law and practice" indicates that Indonesia's domestic obligations must operate within the broader framework of international legal norms.

¹⁵ Sitinjak et al., "Perdagangan Organ Di Kamboja: Dinamika Tindak Pidana Perdagangan Orang Dalam Kejahatan Transnasional."

¹⁶ Masrina Yanggolo, Caecilia J. J Waha, and Dicky J. Paseki, "Implementasi Perlindungan Hukum Terhadap Korban Tindak Pidana Perdagangan Orang Di Kamboja," *Jurnal Fakultas Hukum UNSRAT* 12, no. 4 (2024): 1–12.

¹⁷ M. A. Lubis, "The Prophetic Arts of Communication: Some Reflections on Humanity," *International Journal of Academic Research in Business and Social Sciences* 9, no. 9 (2019): 1223–1233.

¹⁸ Undang-Undang, Undang-Undang Nomor 37 Tahun 1999 tentang Hubungan Luar Negeri.

Nugroho's study on Indonesia's diplomatic protection policy demonstrates that domestic legal provisions often lack operational clarity when confronted with complex transnational crime scenarios involving Indonesian citizens.

A related normative gap can also be identified in Law No. 21 of 2007 on the Eradication of Human Trafficking, particularly regarding the legal status of victims and perpetrators. Research by Ginting and Rahmi highlights that the implementation of Article 7 of the Palermo Protocol within Indonesian law remains incomplete, especially concerning protection mechanisms for trafficking victims and coordination between relevant institutions.¹⁹

This regulatory gap has direct implications for the categorization of Indonesian citizens involved in criminal networks abroad. When the legal distinction between victims and perpetrators is unclear, government responses may become reactive and inconsistent. In practice, this ambiguity can lead to secondary victimization or premature deportation of individuals who may actually qualify as victims of trafficking.²⁰

Moreover, the organized crime dimension of human trafficking further complicates the legal protection framework. Studies on transnational trafficking networks demonstrate that these crimes are often conducted by structured organizations involving cross-border actors, including intermediaries, recruiters, and corrupt officials. Such structural complexity creates significant challenges for law enforcement coordination and weakens the state's capacity to simultaneously protect victims and prosecute perpetrators.²¹

These findings indicate that the normative limitations within Indonesian legislation are not merely technical regulatory issues but reflect broader systemic weaknesses in inter-agency coordination and governance in combating transnational organized crime.

2. Implementation of Diplomatic Protection in Handling Cases of Indonesian Citizens in Cambodia

Transnational crimes involving Indonesian citizens in Cambodia can be categorized into two groups based on the Palermo Convention, which Indonesia has ratified through Law No. 5 of 2009:²²

¹⁹ Undang-Undang, "Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang" (2007).

²⁰ Ginting and Rahmi, "The Implementation of Article 7 of the Palermo Protocol in Law Number 21 of 2007: An Analysis of the Compatibility of International Legal Norms with the Protection of Victims of Human Trafficking in Indonesia."

²¹ Ariyanto Nugroho, "Mengevaluasi Kebijakan Diplomasi Perlindungan WNI Melalui Paradigma," *Politica* 13, no. 2 (2022): 260–75, <https://doi.org/10.22212/jp.v13i2.3499>.

²² Undang-Undang Republik Indonesia, "Undang-Undang No. 5 Tahun 2009" (2009).

- a. cases where Indonesian citizens act primarily as victims (such as trafficking or recruitment fraud), and
- b. cases where they act as active perpetrators, including online fraud operations and participation in trafficking networks.

This distinction is crucial because it determines the scope of diplomatic protection available under both international and national law.

One illustrative case involves the organ trafficking network uncovered in Cambodia, where more than 122 Indonesian citizens were reportedly involved either as victims or intermediaries in illegal kidney transplantation operations.²³ Sitinjak, Rifai, and Gustianti explain that the syndicate operated through a structured network involving recruiters, brokers, and medical facilities across several jurisdictions.²⁴ In such situations, the legal status of Indonesian nationals becomes ambiguous because some victims subsequently become recruiters or intermediaries within the same network.

Another relevant example is the case of 34 Indonesian citizens in Poipet, Cambodia, in 2022, who were initially identified as victims of human trafficking but later chose to remain working in online scam operations due to economic incentives.²⁵ This transformation from victim to participant created significant legal and diplomatic challenges.

From a practical perspective, the handling of such cases requires coordination between multiple Indonesian institutions, particularly the Ministry of Foreign Affairs (Kementerian Luar Negeri) and the Indonesian National Police (Polri). In the Poipet case, the Indonesian Embassy in Phnom Penh first received distress reports from Indonesian workers trapped in scam compounds. The embassy then coordinated with Cambodian authorities to conduct rescue operations and temporarily shelter the victims before repatriation.

However, coordination challenges often arise during the investigation and repatriation phases. While the Ministry of Foreign Affairs focuses primarily on consular protection and evacuation, the Indonesian National Police are responsible for criminal investigations and dismantling transnational syndicates operating from Indonesia.

²³ Harianto Frans Semarta PA and Mhd Teguh Syuhada Lubis, "Kebijakan Hukum Pidana Terhadap Pemain Judi Online Dalam Penegakan Hukum Di Indonesia Criminal Law Policy Toward Online Gamblers in Indonesian Law Enforcement," *Justicia Journal* 15, no. 1 (2026): 143–51.

²⁴ Sitinjak et al., "Perdagangan Organ Di Kamboja: Dinamika Tindak Pidana Perdagangan Orang Dalam Kejahatan Transnasional."

²⁵ Muhammad Daffa Khairan Hary Satrio Nugroho, Tatang Iskandar, "Peranan Hubungan Diplomatik Dalam Perlindungan Warga Negara Indonesia Di Luar Negeri," *Jurnal Ilmiah Kajian Keimigrasian* 7, no. 1 (2024): 2–12.

Differences in institutional mandates sometimes delay information exchange regarding the legal status of individuals involved, particularly when determining whether they should be treated as victims requiring protection or suspects subject to criminal investigation.²⁶

In the organ trafficking case, for example, Polri launched a domestic investigation that led to the arrest of several suspects in Indonesia, including immigration officials allegedly facilitating the trafficking network. At the same time, Indonesian diplomats in Cambodia faced difficulties obtaining transparent information from Cambodian authorities regarding the prosecution of actors operating within Cambodian territory. This situation demonstrates the limitations of diplomatic protection mechanisms when international criminal cooperation is insufficient.²⁷

Nugroho emphasizes that effective law enforcement requires clear accountability structures and multilayered oversight mechanisms.²⁸ In the context of protecting Indonesian citizens abroad, similar clarity is needed regarding which institution has the authority to determine the legal classification of Indonesian nationals involved in transnational crime. The absence of clear written procedures for this classification increases the risk of inconsistent responses among state institutions.

Based on the above analysis, the normative boundaries of Indonesia's diplomatic protection obligations in cases involving Indonesian citizens engaged in transnational crimes can be categorized into three levels of protection.

First, absolute obligations, which cannot be waived under any circumstances. These include notification of consular rights, access to consular visits, and facilitation of legal representation for detained Indonesian citizens. These rights are guaranteed under Article 36 of the Vienna Convention on Consular Relations (1963) and apply regardless of whether the individual is a victim or perpetrator.²⁹

Second, conditional obligations, which arise when Indonesian citizens face real and imminent threats to their safety. Under Article 21 of Law No. 37 of 1999, Indonesian

²⁶ Jermy Runtuwene, "Perlindungan Hukum Terhadap Warga Negara Indonesia Di Luar Negeri Menurut Undang-Undang Nomor 37 Tahun 1999 Tentang Hubungan Luar Negeri," *Lex Et Societatis* 8, no. 4 (2020): 1-9.

²⁷ Mhd. Teguh Syuhada Lubis, "Pertanggungjawaban Pidana Bagi Pelaku Tindak Pidana Penyelundupan Manusia," *De Lega Lata* 2, no. 1 (2017): 92-112.

²⁸ Hary Satrio Nugroho, Tatang Iskandar, "Peranan Hubungan Diplomatik Dalam Perlindungan Warga Negara Indonesia Di Luar Negeri."

²⁹ Sri Redjeki Slamet, Zulfikar Judge, and Henry Arianto, "Indikasi Perjanjian Nominee Sebagai Bentuk Penyelundupan Hukum Perjanjian Ditinjau Dari Keabsahan Dan Kekuatan Mengikatnya," *LexJurnalica* 20, no. 3 (2023): 310, https://digilib.esaunggul.ac.id/UEU-Journal-11_4482/31458/hukum-perjanjian-internasional-pentingnya-definisi-untuk-memahami.

diplomatic missions must provide emergency protection, evacuation, and repatriation when citizens are exposed to life-threatening situations.³⁰

Third, discretionary diplomatic protection, which involves the possibility of bringing interstate claims or diplomatic interventions at the international level. In such situations, Indonesia has full discretion to consider several factors, including the individual's legal status, the potential application of the clean hands doctrine, bilateral relations with the host state, and Indonesia's obligations under the Palermo Convention to cooperate in combating transnational organized crime.

Ultimately, a normative tension exists between Indonesia's duty to protect its citizens and its international obligations to combat transnational crime. The absence of clear coordination mechanisms between domestic institutions—combined with regulatory gaps within Law No. 21 of 2007 complicates the practical implementation of these obligations. Addressing this challenge requires stronger regulatory harmonization and clearer institutional guidelines for determining the legal status of Indonesian citizens involved in transnational criminal networks.

CONCLUSION

This research demonstrates that Indonesia's diplomatic protection obligations for Indonesian citizens involved in transnational crimes abroad, particularly in Cambodia, are not absolute but operate within normative limits established by international and national law. Under international law, particularly the *International Law Commission Draft Articles on Diplomatic Protection* (2006), diplomatic protection is a discretionary right of the state rather than a mandatory obligation. This discretion is influenced by legal principles such as the exhaustion of local remedies and the clean hands doctrine, which restrict the possibility of diplomatic claims when nationals are directly involved in unlawful conduct.

Within the Indonesian legal framework, the protection of citizens abroad is primarily regulated by Law No. 37 of 1999 on Foreign Relations and Law No. 21 of 2007 on the Eradication of the Crime of Human Trafficking. However, these regulations do not fully address the complex realities of transnational crime, where Indonesian citizens may occupy multiple roles within criminal networks—for example, individuals who initially become victims but later participate in criminal activities. This normative gap complicates

³⁰ Prima Muliadi, Tengku Erwinsyahbana, and Lubis Mhd Teguh Syuhada, "Pengawasan Kewenangan Diskresi Kepolisian Terhadap Penghentian Penyidikan Tindak Pidana Berdasarkan Keadilan Restoratif Di Kepolisian Daerah Sumatera Utara," *IURIS STUDIA: Jurnal Kajian Hukum* 5 (2024): 58–70.

the practical implementation of diplomatic protection, particularly in cases involving transnational organized crime networks in Cambodia.

This study identifies three levels of protection obligations for Indonesian citizens involved in transnational crimes. First, absolute obligations, which include minimum consular rights such as communication with consular officials and access to legal assistance, as guaranteed by the *Vienna Convention on Consular Relations* (1963). Second, conditional obligations, which arise when Indonesian citizens face imminent threats to their safety and require emergency protection, evacuation, or repatriation under Article 21 of Law No. 37 of 1999. Third, discretionary diplomatic protection, where the Indonesian government may decide whether to pursue interstate claims by considering factors such as the individual's status as victim or perpetrator, the clean hands doctrine, bilateral diplomatic relations, and Indonesia's obligations under the *United Nations Convention Against Transnational Organized Crime* (Palermo Convention).

To address these challenges, stronger policy clarity and institutional coordination are necessary. This study therefore recommends that the Indonesian government establish a clear written policy framework for categorizing Indonesian citizens involved in transnational crime cases abroad. Such a framework should include several key elements.

First, it should provide clear legal criteria for distinguishing victims, perpetrators, and individuals with dual status, particularly in situations where victims later participate in criminal activities due to coercion, deception, or economic vulnerability. Second, it should define institutional roles and coordination mechanisms among relevant agencies, including the Ministry of Foreign Affairs, the Indonesian National Police, immigration authorities, and anti-trafficking task forces. Third, the policy should establish standard operating procedures for information sharing and case assessment, enabling Indonesian diplomatic missions abroad to coordinate efficiently with domestic law enforcement agencies. Fourth, the framework should incorporate human rights-based safeguards to ensure that potential trafficking victims are not prematurely classified as perpetrators without proper investigation. Finally, the policy should integrate international cooperation mechanisms, including mutual legal assistance and law enforcement collaboration under the *Palermo Convention*, to ensure consistency with Indonesia's obligations to combat transnational organized crime. By adopting a clear and integrated policy framework, Indonesia can enhance legal certainty in protecting its citizens abroad while maintaining its commitment to international cooperation against transnational crime.

REFERENCES

- Ali, Zainuddin. *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, 2016.
- Armin, Mansur, and Bin Ali. "Status Personal Dalam Rezim Hukum Perdata Internasional." *Mataram Journal of International Law* 1, no. 1 (2023): 88-95.
- Commission, International Law. Draft Articles on Diplomatic Protection with Commentaries UN Doc. A/61/10 (2006).
- Dugard, John. "Diplomatic Protection." In *Max Planck Encyclopedia of Public International Law*. Oxford: Oxford University Press, 2006.
- Ginting, Aulia Dwi Salmah, and Atikah Rahmi. "The Implementation of Article 7 of the Palermo Protocol in Law Number 21 of 2007: An Analysis of the Compatibility of International Legal Norms with the Protection of Victims of Human Trafficking in Indonesia." *JHSS: Journal of Humanities and Social Studies* 10, no. 1 (2026): 1-12.
- Hamzah, Amir. *Metode Penelitian Studi Kasus: Single Case, Instrumental Case, Multicase Dan Multisite*. Malang: Literasi Nusantara Abadi, 2020.
- Hary Satrio Nugroho, Tatang Iskandar, Muhammad Daffa Khairan. "Peranan Hubungan Diplomatik Dalam Perlindungan Warga Negara Indonesia Di Luar Negeri." *Jurnal Ilmiah Kajian Keimigrasian* 7, no. 1 (2024): 2-12.
- Lubis, M. A. "The Prophetic Arts of Communication: Some Reflections on Humanity." *International Journal of Academic Research in Business and Social Sciences* 9, no. 9 (2019): 1223-1233.
- Lubis, Mhd. Teguh Syuhada. "Pertanggungjawaban Pidana Bagi Pelaku Tindak Pidana Penyeludupan Manusia." *De Lega Lata* 2, no. 1 (2017): 92-112.
- Lubis, Mhd Teguh Syuhada. "Criminal Imposition of Environmental Crimes." *IJRS: International Journal Reglement & Society* 4, no. 3 (2023): 278-87.
- MS, Benito Asdhie Kodiyat, and Dedi Kurniawan. "Efforts To Counter The Crime Of Trafficking In Persons Within The Scope." *Buletin Konstitusi* 5, no. 2 (2024): 1-21.
- Muhammad, Abdulkadir. "Hukum Dan Penelitian Hukum." *LAW REFORM* 8, no. 1 (2004): 134. <https://doi.org/10.20961/hpe.v6i2.1769>.
- Muliadi, Prima, Tengku Erwinsyahbana, and Lubis Mhd Teguh Syuhada. "Pengawasan Kewenangan Diskresi Kepolisian Terhadap Penghentian Penyidikan Tindak Pidana Berdasarkan Keadilan Restoratif Di Kepolisian Daerah Sumatera Utara." *IURIS STUDIA: Jurnal Kajian Hukum* 5 (2024): 58-70.
- Nugroho, Ariyanto. "Mengevaluasi Kebijakan Diplomasi Perlindungan WNI Melalui Paradigma." *Politica* 13, no. 2 (2022): 260-75. <https://doi.org/10.22212/jp.v13i2.3499>.
- PA, Harianto Frans Semarta, and Mhd Teguh Syuhada Lubis. "Kebijakan Hukum Pidana Terhadap Pemain Judi Online Dalam Penegakan Hukum Di Indonesia Criminal

- Law Policy Toward Online Gamblers in Indonesian Law Enforcement." *Justicia Journal* 15, no. 1 (2026): 143–51.
- Runtuwene, Jermy. "Perlindungan Hukum Terhadap Warga Negara Indonesia Di Luar Negeri Menurut Undang-Undang Nomor 37 Tahun 1999 Tentang Hubungan Luar Negeri." *Lex Et Societatis* 8, no. 4 (2020): 1–9.
- Saraswati, A.A. Ratih & I Ketut Westra. "Perjanjian Nominee Berdasarkan Hukum Positif Indonesia." *Kertha Semaya: Journal Ilmu Hukum*, no. 4(2) (2018): 1–15.
- Sitinjak, Anugrah Partogi, Maulana Rifai, Gustianti, and Nurbani Adine. "Perdagangan Organ Di Kamboja: Dinamika Tindak Pidana Perdagangan Orang Dalam Kejahatan Transnasional." *Jurnal Ilmiah Wahana Pendidikan* 11, no. 11 (2025): 1–8.
- Slamet, Sri Redjeki, Zulfikar Judge, and Henry Arianto. "Indikasi Perjanjian Nominee Sebagai Bentuk Penyelundupan Hukum Perjanjian Ditinjau Dari Keabsahan Dan Kekuatan Mengikatnya." *LexJurnalica* 20, no. 3 (2023): 310. https://digilib.esaunggul.ac.id/UEU-Journal-11_4482/31458/hukum-perjanjian-internasional-pentingnya-definisi-untuk-memahami.
- Solicha, Fitri Hardianti,, and Wijayanti Asri. "Perlindungan Hukum Terhadap Pekerja Atas Alat Pelindung Diri." *Wijayakusuma Law Review* 2, no. 1 (2020): 23–37. <https://doi.org/10.51921/af41a146>.
- Undang-Undang. Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang (2007).
- — —. Undang-Undang Nomor 37 Tahun 1999 tentang Hubungan Luar Negeri (1999).
- Undang-Undang Republik Indonesia. Undang-Undang No. 5 Tahun 2009 (2009).
- Yanggolo, Masrina, Caecilia J. J Waha, and Dicky J. Paseki. "Implementasi Perlindungan Hukum Terhadap Korban Tindak Pidana Perdagangan Orang Di Kamboja." *Jurnal Fakultas Hukum UNSRAT* 12, no. 4 (2024): 1–12.