



CRIMINAL LAW PROTECTION OF INDONESIAN CITIZENS AS VICTIMS OF VIOLENCE BY DIPLOMATS' FAMILIES IN THE PERSPECTIVE OF CRITICAL VICTIMOLOGY

Received: March, 2026 Accepted: April 2026 Online Published: April 2026

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ABSTRACT

This study aims to analyze the protection of criminal law against Indonesian citizens (WNI) as victims of violence committed by the family of diplomats and the role of the state in providing legal protection from a critical victimology perspective. This research is a normative legal research using a legislative approach and a conceptual approach. The legal materials used include laws and regulations, the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, as well as literature related to victim protection and victimology. The results of the study show that the protection of criminal law against Indonesian citizens as victims of violence by the families of diplomats has not been implemented optimally due to the diplomatic immunity possessed by diplomats and their families, so that the criminal law enforcement process experiences obstacles. From a critical victimology perspective, this problem shows structural injustice and power imbalance between perpetrators who have diplomatic immunity and victims who do not have special protections, so that victims are in a weak position to obtain justice. Critical victimology views that victims are not only victims because of the perpetrator's actions, but also because of legal systems and power structures that have not been fully on the side of the victim. Therefore, the state has an obligation to provide more optimal legal protection to victims through legal protection, assistance, rehabilitation, and diplomatic efforts so that victims continue to receive justice and legal protection even though the perpetrators have diplomatic immunity.

Keywords: Legal protection, victims of crime, family of diplomats, critical victimology, diplomatic immunity.

ABSTRACT

This study aims to analyze criminal law protection for Indonesian citizens as victims of violence committed by diplomats' family members and the role of the state in providing legal protection from the perspective of critical victimology. This research is a normative legal research using statutory and conceptual approaches. The legal materials used include laws and regulations, the Vienna Convention on Diplomatic Relations 1961, the Vienna Convention on Consular Relations 1963, and literature related to victim protection and victimology. The results of the study indicate that criminal law protection for Indonesian citizens who become victims of violence committed by diplomats' family members has not been implemented optimally due to diplomatic immunity possessed by diplomats and their families, which creates obstacles in criminal law enforcement. From the perspective of critical victimology, this issue reflects structural injustice and power imbalance between perpetrators who have diplomatic immunity and victims who do not have special protection, placing victims in a weak position in obtaining justice. Critical victimology views that victims are not only victims of criminal acts but also victims of legal systems and power structures that do not fully protect victims. Therefore, the state has an obligation to provide better legal protection for victims through legal protection mechanisms, assistance, recovery, and diplomatic efforts so that victims can still obtain justice and legal protection despite the existence of diplomatic immunity.

Keywords: Legal Protection, Crime Victims, Diplomat Family, Critical Victimology, Diplomatic Immunity.

Introduction

A. Background

Violence in the diplomat's family is an issue that is rarely discussed but has a big impact on the victim, especially if the victim is an Indonesian citizen (WNI). In the context of international diplomatic relations, diplomatic families have the immunity provided for by the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. This immunity is often a barrier for victims to get justice. Therefore, the role of the Ministry of Foreign Affairs (Kemenlu) is very important in ensuring legal protection for victims while maintaining good diplomatic relations with other countries.¹

Legal protection of Indonesian citizens (WNI) who are victims of violence, including violence in the family of diplomats, is an important responsibility carried out by the state, especially through the role of the Ministry of Foreign Affairs. Cases of

¹ Tabitha, V. E. M. (2024). Protection of Indonesian Citizens Abroad According to International Law. *Lex Administratum*, 12(3).

violence in the diplomatic family have their own complexity because they involve diplomatic immunity provided for in the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. This immunity is often an obstacle in the law enforcement process, both in the country of placement and in the country of origin.²

The 1961 Vienna Convention grants legal immunity to diplomats and their families while carrying out their duties in the country of settlement, while the 1963 Vienna Convention provides guidance for consular protection for Indonesian citizens abroad. While this immunity is designed to ensure the smooth running of international relations, there are challenges when it is abused, especially in cases of domestic violence.

In this context, the Ministry of Foreign Affairs plays a central role in bridging the need for legal protection for victims while maintaining diplomatic relations with other countries. This role includes providing legal assistance, mediation, and coordination with various parties, both domestic and international, to ensure victims' rights are met. An analysis of the implementation of the 1961 and 1963 Vienna Conventions in these cases can provide an in-depth understanding of the effectiveness of the role of the Ministry of Foreign Affairs in protecting Indonesian citizens who are victims of violence, as well as identifying legal loopholes that need to be corrected.

The 1961 Vienna Convention was designed to protect diplomatic relations between countries to keep them running smoothly. Within this framework, diplomats and their families have immunity that allows them to be exempt from criminal or civil prosecution in the country where they serve. This convention is intended to ensure the smooth running of diplomatic tasks, but its implementation often poses a dilemma when such immunity is abused. For example, in cases of domestic violence, victims often have difficulty demanding justice because the perpetrator is under immunity protection. This has raised concerns about how international legal mechanisms can be used without violating the principle of diplomatic immunity.³

As part of the state's obligation to protect its citizens, the Ministry of Foreign

² Moeliono, T. P., Lumbantobing, J., Prawesti, N., & Ramon, A. A. (2018). *International Law, National Law, and Indonesia*.

³ Inkiriwang, K. G. (2015). The effectiveness of the 1961 Vienna Convention on Diplomatic Relations in resolving conflicts. *Interstate. Lex et Societatis*, 3(1).

Affairs plays an important role in providing legal protection to Indonesian citizens who are victims of violence, including violence in the diplomat's family. This role includes not only providing legal assistance, but also mediation, advocacy, and policy development to prevent similar cases in the future. On the other hand, the Ministry must also maintain diplomatic relations with other countries, so that its role becomes very strategic but full of challenges. In the context of international law, the Indonesian government must strike a balance between its commitment to international conventions and the protection of human rights for its citizens.

Furthermore, the 1963 Vienna Convention on Consular Relations provides a legal basis for consular representatives to protect Indonesian citizens abroad. This function includes accompanying victims of domestic violence committed by diplomats or their family members.⁴ However, the mechanism for implementing consular protection often faces obstacles in practice, especially when dealing with the protection of immunity regulated by the 1961 Vienna Convention. This situation requires a cautious approach, including close cooperation between the host country, the diplomat's home country, and relevant international institutions.

On the other hand, the high number of cases of domestic violence in the diplomatic sphere shows that there is a gap in the current international legal system. Victims of violence often do not have adequate access to legal aid or protection mechanisms. In some cases, victims have even been pressured not to report the incident in order to protect the good name of their families or bilateral relations between countries. It is therefore important to analyze the extent to which the Vienna Conventions of 1961 and 1963 can be applied fairly without sacrificing the rights of victims of violence, while identifying concrete steps that the Ministry of Foreign Affairs can take in carrying out its role.

An in-depth analysis of the role of the Ministry of Foreign Affairs is important not only to evaluate the effectiveness of the implementation of the two conventions, but also to

⁴ Yonathan Yogy, (2018), *The State's Responsibility for the Protection of Diplomatic Officials According to the 1961 Vienna Convention (Example of the Case of Attack on the Russian Ambassador in Turkey)*, Jakarta, Faculty of Law.

provide relevant policy recommendations. By understanding the weaknesses and strengths in the existing mechanisms, it is hoped that the Indonesian government can strengthen legal protection for Indonesian citizens abroad, especially for those who are victims of domestic violence in the diplomatic environment. This research also has the potential to contribute to the academic literature and policies related to international law, consular protection, and protection diplomacy.

Thus, this study is important to evaluate the extent to which international and national legal instruments can be optimally integrated to provide justice for victims, as well as provide relevant policy recommendations in strengthening the government's role in protecting Indonesian citizens abroad.

B. Problem Formulation

1. How is the criminal law regulation for violent crimes committed by the families of diplomats against Indonesian citizens as victims?
2. What is the legal protection of Indonesian citizens as victims of violence by the family of diplomats from the perspective of critical victimology?

DISCUSSION

A. Criminal Law Regulations on Violent Crimes Committed by Diplomats' Families Against Indonesian Citizens as Victims

The role of the Ministry of Foreign Affairs in providing legal protection for victims of violence involving the families of diplomats is a complex responsibility, especially due to the principle of diplomatic immunity set out in the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. The 1961 Vienna Convention grants legal immunity to diplomats and their families from the legal jurisdiction of the receiving country, which aims to ensure the smooth running of diplomatic relations between countries. However, in cases of domestic violence involving the diplomat's family, this immunity is often a barrier for victims to get justice. The Ministry of Foreign Affairs must play a strategic role in ensuring the protection of victims' rights without violating the principles of the international convention.⁵

As part of its protection diplomacy responsibility, the Ministry of Foreign Affairs takes various steps, such as providing legal and consular assistance to victims through the Embassy

⁵ Walean, G. M. Y. (2017). Diplomatic representatives commit criminal acts in the recipient country according to the 1961 Vienna Convention. *Lex Crimen*, 6(10).

of the Republic of Indonesia (KBRI) or the Consulate General of the Republic of Indonesia (KJRI) in the country where the incident occurred. This function is regulated in the 1963 Vienna Convention, which provides a legal basis for consular representation to protect the interests of Indonesian citizens abroad. In practice, the Ministry also often mediates with the diplomat's home country to ensure that cases of violence are handled fairly, including by submitting a request for the revocation of the perpetrator's immunity to the government of the country of origin.⁶

In addition, the Ministry of Foreign Affairs is also tasked with coordinating various parties, both at home and abroad, to provide maximum protection to victims. This effort involves cooperation with relevant agencies in Indonesia, such as the Ministry of Law and Human Rights and women and child protection institutions, to provide legal and psychological assistance.⁷ However, the implementation of this role often faces obstacles, such as political or diplomatic pressure, as well as limited legal jurisdiction due to immunity protection. Therefore, it is necessary to strengthen national regulations that support the role of the Ministry in handling similar cases, including the preparation of special protocols to deal with domestic violence within diplomats.

The Ministry of Foreign Affairs has several key roles in handling cases of violence involving the families of diplomats:

1. Mediation and Diplomatic Negotiations

The Ministry of Foreign Affairs can mediate between the diplomat's home country and the recipient country to ensure that cases of violence are handled fairly. In some cases, the Ministry of Foreign Affairs may also request that immunity be revoked, especially if the case is serious.

2. Legal Assistance for Victims

The Ministry of Foreign Affairs can provide legal assistance to victims through Indonesian diplomatic representatives abroad. This assistance includes legal, psychological, and temporary shelter facilities.

3. Cooperation with International Institutions

The Ministry of Foreign Affairs can work with international organizations or UN agencies to exert diplomatic pressure on the home countries of diplomats involved in cases of violence.

⁶ C.S.T. Kansil.1989.Diplomatic Relations of the Republic of Indonesia.Jakarta: Balai Pustaka.P. 3

⁷ Angelia, T., & Suherman, A. (2024). Legal Analysis on Human Rights Protection for Indonesian Migrant Workers in Destination Countries. *Journal of Legal and Policy Innovation*, 5(4).

With roles that include protection diplomacy, international mediation, and consular functions, the Ministry of Foreign Affairs is at the forefront of ensuring that victims of domestic violence involving diplomats' families continue to receive justice. Despite the challenges, the Ministry continues to strive to balance the international obligations set out in the Vienna Convention and the responsibility to protect the human rights of Indonesian citizens abroad. This effort is not only important to provide justice for victims, but also to strengthen Indonesia's position in protecting its citizens on the international stage.

B. Legal Protection of Indonesian Citizens as Victims of Violence by Diplomats' Families in the Perspective of Critical Victimology

The Ministry of Foreign Affairs faces various obstacles in handling cases of violence against Indonesian citizens (WNI) by diplomatic families, most of which are rooted in the rules of diplomatic immunity as stipulated in the 1961 Vienna Convention. This immunity grants diplomats and their families legal immunity from the jurisdiction of the receiving country, which often hinders law enforcement efforts against perpetrators of violence. In some cases, the authorities of the receiving country cannot conduct an investigation or prosecution of the perpetrator without the revocation of the immunity that must be approved by the diplomat's home country. In addition, there are obstacles in terms of diplomatic and political pressure, as the resolution of such cases requires an approach that is not only oriented towards victims' justice, but also considers bilateral relations between countries.⁸

Legal protection of Indonesian citizens (WNI) as victims of violence by the family of diplomats is part of the state's obligation to provide protection to every citizen without exception. In criminal law, a victim is a party who experiences physical, psychological, or material suffering due to a criminal act. The state has a responsibility to ensure legal protection, both through laws and regulations and through authorized state institutions, including in cases involving the families of diplomats who have diplomatic immunity. The legal protection includes preventive and repressive protection, including legal assistance, victim recovery, and law enforcement efforts against perpetrators.⁹

However, in practice, legal protection for Indonesian citizens who are victims of violence by diplomatic families often experiences obstacles due to the existence of diplomatic immunity and privileges as stipulated in the 1961 Vienna Convention on Diplomatic Relations

⁸ Natalia, P., Pertiwi, R. D., Hapipah, N., Shidki, M., & Ardianto, B. (2024). Protection of Indonesian Citizens Abroad Based on International Law. *Nakula Journal: Centre for Education, Language and Social Sciences*, 2(4), 194-200.

⁹ Rena Yulia, "Victimology: Legal Protection for Crime Victims," *Journal of Legal Science*, Vol. 6 No. 2, 2013, p. 98.

and the 1963 Vienna Convention on Consular Relations. Diplomatic immunity causes law enforcement officials in the receiving country to be unable to easily carry out legal proceedings against diplomats and their families. This condition creates inequality between the perpetrator and the victim, where the victim is in a weaker position because the perpetrator has international legal protection in the form of diplomatic immunity. As a result, victims often have difficulty obtaining justice and legal protection to the maximum.¹⁰

From a critical victimology perspective, these conditions indicate structural injustices that make certain groups more vulnerable to victimization and difficult to obtain legal protection. Critical victimology views that victims are not only victims because of the perpetrators' actions, but also because of power structures, legal systems, and policies that indirectly put victims in a weak position. In the case of violence committed by the diplomat's family against Indonesian citizens, there is a power imbalance between diplomats as representatives of foreign countries who have legal immunity and Indonesian citizens as ordinary citizens who do not have special power or protection.¹¹

From a critical victimology perspective, the state has an important role to play in reducing this inequality by providing maximum legal protection to victims, either through diplomatic channels, negotiations between countries, the revocation of diplomatic immunity, or through the mechanism of repatriation of diplomats (*persona non grata*). In addition, the state must also ensure that victims receive protection, recovery, and compensation for the losses they have suffered. Protection for victims does not only focus on punishing the perpetrator, but also on restoring the rights of victims who have been violated due to these violent crimes.¹²

Thus, the legal protection of Indonesian citizens as victims of violence by the family of diplomats in the perspective of critical victimology emphasizes that the victim must be the center of attention in the legal system. The state is not only tasked with maintaining diplomatic relations between countries, but also obliged to protect its citizens from all forms of crimes, including those committed by parties with diplomatic immunity. The perspective of critical victimology demands a balance between the interests of diplomatic relations and the protection of victims, so that justice is not only on the side of the perpetrator who has power, but also on the victim who needs legal protection.¹³

¹⁰ Dikdik M. Arief Mansur, "Protection of Crime Victims in the Perspective of the Criminal Justice System," *Journal of Law and Justice*, Vol. 2 No. 1, 2013, p. 45.

¹¹ Mahrus Ali, "Victim Protection in the Indonesian Criminal Justice System," *IUS QUIA IUSTUM Legal Journal*, Vol. 21 No. 1, 2014, p. 112.

¹² Lilik Mulyadi, "Legal Protection of Crime Victims in the Perspective of Victimology," *Journal of Law and Justice*, Vol. 4 No. 1, 2015, p. 15.

¹³ Setya Wahyudi, "Protection of Crime Victims in the Criminal Justice System in Indonesia," *Journal of Legal Sciences*, Vol. 9 No. 1, 2016, p. 120.

On the other hand, the limited capacity of human resources and infrastructure in Indonesian diplomatic representatives is also an obstacle. Not all consular staff have specialized training or expertise in handling complex cases of domestic violence, especially those involving diplomatic families. In addition, the lack of specific protocols or guidelines at the national level on how to handle these cases often makes the process of advocacy and legal assistance for victims less effective. Another obstacle is legal uncertainty in cases that are not explicitly regulated by the Vienna Convention, making it difficult for the Ministry to formulate firm legal measures.

The Ministry of Foreign Affairs (Kemenlu) faces a number of significant obstacles in handling cases of violence against Indonesian citizens involving the families of diplomats, both domestically and abroad. One of the main obstacles is the diplomatic immunity provided for in the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. This immunity provides legal protection to diplomats and their families from the legal jurisdiction of the receiving country, which means that the receiving country cannot prosecute diplomats or their families if they are involved in criminal acts, including domestic violence. This provision aims to maintain smooth diplomatic relations between countries, but on the other hand, it is often an obstacle to law enforcement and the protection of the rights of victims of domestic violence involving the families of diplomats. Legal proceedings against perpetrators of violence are severely limited because the receiving country cannot force the sending country to revoke immunity or grant permission for investigation and prosecution.¹⁴

In addition to diplomatic immunity, diplomatic pressure is another obstacle. In many cases, the diplomat's home country can exert political pressure on the recipient country to cover up or suppress cases of violence involving their diplomat, especially if the diplomat has an important position or relationship with the country of origin. This can exacerbate the situation, as victims of violence often feel isolated and struggle to obtain protection or justice. This situation also leads to legal uncertainty, as the arrangements regarding the handling of cases of violence within the diplomatic environment are not always clear in international law or even the domestic law of the receiving country.

Another obstacle faced by the Ministry of Foreign Affairs is the limited national regulations that regulate the handling of domestic violence cases within diplomats. Although there is an international legal framework that provides an overview, there is no specific

¹⁴ Paramitaningrum, R. V. Y., & Dewi, G. D. P. (2018). The Indonesian Government's Diplomacy Model for the Protection of Indonesian Citizens, Formal and Informal Sector Workers Abroad. *Journal of Global & Strategic Studies*, 12(1), 17.

regulation at the national level that regulates the procedure for handling cases of violence against Indonesian citizens committed by diplomats or their families. This led to his confusion in implementing concrete measures that could protect victims and demand justice for them. In addition, the limited capacity of human resources in Indonesian diplomatic representatives is also a problem. Many consular staff do not have adequate training to handle cases of domestic violence, especially those involving diplomats and their families. The expertise required to handle situations like this is so specific and often unpredictable, that Indonesian diplomatic representatives have difficulty responding appropriately.¹⁵

To overcome these constraints, several solutions can be implemented with more strategic and structured measures. First, increased training for consular staff at Indonesian diplomatic missions is important. The Ministry of Foreign Affairs should ensure that staff handling legal protection cases have a deep understanding of domestic violence, as well as appropriate legal protection mechanisms, both in international law and in the law of the recipient country. The training should also include skills in dealing with complex dynamics of violence, including how to accompany victims and communicate with other institutions that can provide support, such as women and child protection agencies.

Second, it is necessary to prepare a more specific and clear national protocol or regulation regarding the handling of domestic violence cases involving diplomats. This protocol should include the steps that the Ministry of Foreign Affairs and relevant agencies, such as the Ministry of Law and Human Rights, must take in dealing with such cases, as well as procedures for coordinating with the diplomat's home country if necessary. With clear guidelines, the Ministry of Foreign Affairs can respond more quickly and appropriately, so that victims can immediately get protection and legal assistance.

Third, Indonesia should encourage international reforms to update the policies in the Vienna Convention that provide greater space for recipient countries to handle cases of domestic violence involving diplomatic families. These reforms could include rule changes that allow the revocation of immunity for diplomats involved in serious crimes, such as domestic violence. Indonesia can put forward this proposal in international forums or through bilateral dialogue with UN member states.

Fourth, a more intensive diplomatic approach with the diplomat's home country should be undertaken to ensure the revocation of immunity if necessary. The country sending diplomats has an obligation to enforce the law against diplomats and their families who violate international law, so Indonesia needs to collaborate with the country of origin of the

¹⁵ Nahampun, A. P. (2024). The responsibility of the sending and receiving state for the safety and security of diplomats according to the 1961 Vienna Convention. *Lex Privatum*, 14(1).

perpetrator of violence to ensure that the perpetrator can be prosecuted. If the sending country is reluctant to revoke immunity, Indonesia can demand stronger diplomatic pressure to support justice efforts.¹⁶

Finally, cooperation with international institutions and non-governmental organizations is essential to support efforts to protect victims of violence. International institutions such as the United Nations and non-governmental organizations that focus on human rights issues and domestic violence can provide moral and diplomatic support to raise global awareness of the importance of protecting victims of violence in the diplomat family. With these measures, the Ministry of Foreign Affairs can be more effective in handling cases of domestic violence involving diplomats and their families, as well as ensuring that victims receive the legal protection and justice they deserve.

Another solution is to maximize diplomatic efforts with the diplomat's home country to ensure the revocation of the immunity of perpetrators of violence in cases involving Indonesian citizens. In addition, the Ministry can also increase cooperation with international institutions such as the United Nations (UN) or non-governmental organizations focused on the protection of victims of violence, to exert moral pressure on the perpetrator's home countries. With the implementation of this solution, it is hoped that the obstacles faced can be minimized, so that legal protection for Indonesian citizens who are victims of violence can be more effective and fair.

CONCLUSION

Legal protection of Indonesian citizens as victims of violence by the family of diplomats is basically the state's obligation to ensure security and justice for every citizen. In practice, however, the protection of criminal law against victims is hampered by the diplomatic immunity that diplomats and their families have under the 1961 Vienna Convention and the 1963 Vienna Convention. This immunity causes the criminal law enforcement process to not run as it should, so victims are often in a weak position and have difficulty obtaining justice. In these conditions, the role of the state through the Ministry of Foreign Affairs is very important in providing legal protection, assistance, and diplomatic efforts to resolve cases involving the families of diplomats.

From a critical victimology perspective, this problem is not only seen as an ordinary criminal act, but also as a form of structural injustice caused by the imbalance of power

¹⁶ Agustina, A., & Ponto, R. T. (2023). Legal protection of foreign nationals in the perspective of international law. *Al-Manhaj: Journal of Islamic Law and Social Institutions*, 5(2), 1779–1788. <https://doi.org/10.37680/Almanhaj.V5i2.3264>

between the perpetrator who has diplomatic immunity and the victim who is an ordinary citizen. Critical victimology views that victims are not only victims because of the perpetrators' actions, but also because of legal systems and power structures that have not fully provided fair protection to victims. Therefore, the protection of victims must be the top priority of the state, so that the law not only protects diplomatic interests between countries, but also guarantees justice and protection for victims of crime.

ADVICE

The state, especially the government through the Ministry of Foreign Affairs, needs to strengthen the legal protection mechanism for Indonesian citizens who are victims of violent crimes committed by the diplomat's family. These efforts can be made through strengthening coordination between the Ministry of Foreign Affairs, law enforcement officials, and witness and victim protection institutions, so that victims continue to receive legal protection, assistance, and restoration of their rights even though the perpetrator has diplomatic immunity. In addition, the government needs to optimize diplomatic efforts such as requests for the revocation of diplomatic immunity or the determination of *persona non grata* for diplomats whose families have committed criminal acts.

From a critical victimology perspective, the state also needs to change its approach to handling cases involving diplomats by placing victims as the party whose protection must be prioritized. The legal system should not only focus on perpetrators and diplomatic relations between countries, but should also pay attention to rights and justice for victims. Therefore, it is necessary to update policies and legal arrangements that are more in favor of victims so that there is no inequality in legal protection, so that victims of crime continue to get justice, protection, and maximum restoration of their rights.

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