

CHAPTER I

INTRODUCTION

A. Background

The Indonesian Embassy in Nigeria (UH) is a diplomatic representative at the head of state level who represents a country to reside and carry out state duties in the receiving country. In general, the duty of an ambassador as a diplomatic representative is to ensure the efficiency of the role of diplomatic representatives in the receiving country. Ambassadors are appointed by presidential prerogative.¹

Diplomats, ambassadors, and other diplomatic agents traditionally have the function of representing their sending country, acting as the voice of the sending government, and serving as intermediaries between the government of the receiving country and the sending country.²

Diplomatic missions here act as representatives of the state responsible for maintaining political relations with other countries. This mission is, of course, carried out by diplomatic institutions, including ambassadors, diplomats, lawyers, and attachés. The meaning of the word diplomacy in international affairs itself is "a legitimate and open means for a country to carry out its foreign policy." In conducting relations between countries, these countries usually provide representatives (embassies or consulates).³

The Ambassador of the Republic of Indonesia (UH) is suspected of making unwanted and inappropriate physical contact while helping the victim locate a Nigerian state on a map in his office. As a result of this action, the victim suffered psychological trauma and had to return to Jakarta to seek professional counseling. The results of a psychological examination by the Indonesian Ministry of Foreign Affairs showed that the victim suffered from post-traumatic stress disorder, anxiety, and depression. Counseling documents presented by the victim's legal team show that the victim suffered psychological damage as a result of the alleged sexual harassment. The victim claims to have been victimized and retaliated against at work, which she believes was an attempt to discredit her and force her out of her job. The alleged retaliatory actions included excessive supervision, negative performance evaluations, and termination of employment.

However, there have been complaints by former embassy staff to a number of authorities alleging sexual harassment and unlawful retaliation. The complaint was revealed in a petition filed by the victim through her legal team, Bowyard Partners. A petition is a written request submitted to the authorities to seek attention or action on an issue or complaint. The petition, titled "Urgent Request for Intervention in Cases of Sexual Harassment, Intimidation, and Unlawful Termination of Employment," was submitted to a number of parties, namely the Office of the Minister of Foreign Affairs, the Indonesian Ambassador to Nigeria, the Head of Administration of the Indonesian Embassy, and the Inspector General of Police (IGP). The petition was sent in June 2024. In the petition, a copy of which was received by the Nigerian media outlet *Leadership.ng*, it is stated that the sexual harassment occurred on February 7, 2024, when the victim, a woman, was carrying out her duties at the Indonesian Embassy in Abuja, Nigeria. The victim is no longer working at the Indonesian Embassy.⁴

Sexual violence is a violation of human rights that causes traumatic effects on victims.

¹ Gracia Monica Sharon Anis, 2017, *Implementation of Diplomatic Law in the Performance of the Duties and Functions of Ambassadors According to the 1961 Vienna Convention*, Lex et Societatis, Vol. V/No.2, p.99

² Sumaryo Suryokusumo, 2013, *International Organization Law*, Tatanusa, Jakarta, p. 69.

³ https://pintar.jatengprov.go.id/uploads/users/rochimudin/materi/SMA_Perwakilan_Diplomatik_2015-04-28/Perwakilan_Diplomatik, accessed August 22, 2025

⁴ Metrotvnews, Indonesian Ambassador to Nigeria Commits Sexual Harassment, obtained from <https://www.metrotvnews.com/read/KYVCD1IE-dubes-ri-di-nigeria-lakukan-pelecehan-seksual-kemenlu-beri-tanggapan>, accessed on April 15, 2024

When sexual violence is committed by an ambassador. In Nigeria, as a developing country in West Africa, and the Vienna Declaration on Human Rights 1993 in Articles 18 and 38 classify violence against women as a violation of human rights. When violence is examined from a human rights perspective, it should actually be preventable because it contradicts human rights and hinders the fulfillment of basic human needs.

However, the use of violence as described above is sometimes unavoidable, especially by law enforcement officials. Therefore, the only way forward is to limit and control the use of violence.⁵

This study aims to analyze the accountability for sexual violence committed by the Indonesian ambassador to Nigeria from an international law perspective. By examining the applicable international legal framework, state practices, and specific cases in Nigeria, it is interesting to become the subject of the author's research.

In this case, there is a comparison of cases involving ambassadors who have committed criminal acts. The ambassador is a representative of the country that sent him. A prominent and relevant case of a criminal act committed by an ambassador abroad and tried under Indonesian jurisdiction is the corruption case involving the former Ambassador Extraordinary and Plenipotentiary of the Republic of Indonesia to Singapore, Mochamad Slamet Hidayat. This case set an important precedent in the enforcement of law against Indonesian diplomatic officials who commit crimes, particularly corruption, while carrying out their duties in other countries.

Mochamad Slamet Hidayat was tried at the Special Court for Corruption Crimes (Tipikor) in Jakarta for his actions that caused financial losses to the state in relation to the renovation project of the Indonesian Embassy in Singapore during the period 2003-2004. Together with the then Treasurer of the Indonesian Embassy in Singapore, Erizal, Slamet Hidayat was charged with inflating funds (mark-up) in the project.⁶ Thus, in the world of international diplomacy, there are the terms *Persona Non Grata* and *Persona Grata*. *Persona Non Grata* is when a diplomatic official commits a violation

Then there was also a case of criminal offense against the immunity of criminal jurisdiction of diplomatic representatives as reviewed in the 1961 Vienna Convention in a case study of a Saudi Arabian diplomatic official who raped a Nepalese citizen in India. This case involved the role of a Saudi Arabian diplomatic official who raped a Nepalese citizen in India. Based on the 1961 Vienna Convention, the Saudi Arabian diplomatic official has immunity from criminal jurisdiction under Indian law.⁷ However, India has the right to take several actions against the Saudi Arabian diplomatic official. The measures that India can take against Saudi Arabian diplomatic officials are to request Saudi Arabia to waive the immunity of its diplomatic officials, or declare the Saudi Arabian diplomatic officials *persona non grata*, and request Saudi Arabia to prosecute its diplomatic officials under Saudi Arabian law. The measures that Nepal can take against Saudi Arabian diplomatic officials are to demand accountability from Saudi Arabia in the form of compensation and satisfaction for its citizens who have been raped.⁸

If the violation committed is a violation of their duties as diplomatic representatives, the receiving country has the right to declare the diplomatic officials or staff concerned *persona non grata*. *Persona non grata* means that the diplomatic officials or staff concerned are considered undesirable and are returned to their country of origin by the receiving country to be replaced by other officials or staff. Meanwhile, *persona grata* is a statement of acceptance by the

⁵ Sri Endah Kinasih, *Protection and Enforcement of Human Rights against Sexual Harassment*, Unair Journal, p.3

⁶ Gladys Maria Yohana Walean, 2017, " Perwakilan Diplomatik Melakukan Tindak Pidana Di Negara Penerima Menurut Konvensi Wina 1961," *Lex Crimen* Vol. VI / No. 10, p. 1.

⁷ Putri Kusuma Dewi, Peni Susetyorini, Kholis Roisah, 2016, *Legal Review Of The Criminal Jurisdictional Immunity Of Diplomatic Representatives In Light Of The 1961 Vienna Convention (Case Study Of Saudi Arabian Diplomatic Officials Who Raped Nepalese Citizens In India)*, *Diponegoro Law Journal*, vol 5, no 3, p. 4

⁸ *Ibid.*

receiving country of a diplomatic representative proposed by the sending country to carry out diplomatic missions or consular functions. The opposite of *persona grata* is *persona non grata*, which means rejection by the receiving country.⁹

The appointment of diplomatic representatives requires certain rituals. Ceremonial procedures are mandatory for a country to receive diplomatic envoys from other countries. If a country has agreed to establish diplomatic relations (*persona grata*) with another country on the basis of the principle of reciprocity (), that country must also consider the composition of the representation, both in terms of its level and the number of staff members agreed upon.¹⁰

Therefore, it is interesting for the author to analyze the alleged sexual violence that occurred in Nigeria, committed by the Indonesian ambassador.¹¹ The author's research examines the alleged sexual violence committed by the Indonesian ambassador. Thus, it seeks to provide a comprehensive understanding of the interaction between diplomatic immunity and responsibility for sexual violence. Furthermore, this study will also explore possible solutions and reforms to ensure justice for victims of sexual violence without neglecting the importance of effective diplomatic relations between countries in an era of globalization with increasingly high diplomatic mobility. so that the actions of ambassadors and diplomats must be a reference for caution in carrying out actions so that a better understanding of this issue is not only relevant to Nigeria but also to the international community as a whole in efforts to uphold human rights and global justice.

Referring to this research, the Indonesian ambassador allegedly made unwanted and inappropriate physical contact while the victim was helping him find the location of a Nigerian state on a map in his office. Inappropriate physical contact is commonly known as sexual harassment or sexual violence.

The legal action taken by the Indonesian Embassy in this case is sexual harassment under Law Number 12 of 2022 concerning Sexual Violence Crimes (TPKS Law). In accordance with Article 5 of Law Number 12 of 2022 on TPKS, "Any person who commits non-physical sexual acts directed at the body, sexual desire, and/or reproductive organs with the intent to degrade a person's dignity based on their sexuality and/or morality, shall be punished for non-physical sexual harassment with a maximum imprisonment of 9 (nine) months and/or a maximum fine of IDR 10,000,000.00 (ten million rupiah)."

It is possible to prosecute in Indonesia for unlawful acts committed abroad because Indonesia adheres to several principles in criminal law that allow for the enforcement of law against its citizens who commit crimes abroad. For example, the Active Nationality Principle (Personalia Principle) states that the state has jurisdiction to prosecute its citizens who commit crimes anywhere, both domestically and abroad.

B. Research Question

1. What are the legal provisions regarding Indonesian ambassadors involved in sexual violence cases from an international law perspective?
2. How is the sending state's law applied in handling cases of sexual violence from an international law perspective ()?

C. Research Objectives and Benefits

Based on the above problem formulation, the author has the following research objectives:

1. To determine the enjoyment and limitations of diplomatic immunity in the receiving country

⁹ *Ibid.*

¹⁰ Sumaryo Suryokusumo, 2005, "Diplomatic Law: Theory and Cases", Alumni, Bandung, p. 108.

¹¹ Viewed on the website <https://www.antaranews.com/berita/127280/tiga-tahun-penjara-untuk-mantan-dubes-koruptor> on August 22, 2025, at 8:25 p.m.

2. To determine the response of the sending and receiving countries when criminal violations occur during the mission.

Based on these research objectives, it is hoped that this study will provide theoretical and practical benefits, namely as follows:

1. This research is expected to be a source of information, knowledge, and understanding for Hasanuddin University's work on immunity rights in the receiving country.
2. The findings of this research are expected to contribute to public understanding of international human rights, particularly those related to inviolable rights in the receiving country.

D. Originality/Authenticity of research

Name	: A JIHAN MAHARANI	
Title	: INTERNATIONAL LEGAL REVIEW ON DIPLOMAT'S INVIOABILITY RIGHT IN RECEIVING STATE (DIPLOMAT'S CRIMINAL OFFENSES CASE STUDY)	
Category	: THESIS	
Year	: 2025	
University	: University of Hasanuddin	
Description	Preivious Research	Research Plan
Issues and Problems:	1. How does international law regulate the privileges and immunities of a diplomat's inviolability in the receiving state? 2. How do the sending and receiving countries respond when criminal offenses occur during a mission?	1. How are the legal arrangements related to the Indonesian ambassador involved in a sexual violence case according to the perspective of international law? 2. How is the law of the sending state applied in handling cases of sexual violence from an international law perspective?
Method Research	Normative	Normative
Discussion Diplomatic immunity is a special privilege that diplomats can obtain in the receiving country. However, in the event of a violation of the law, this special privilege will result in the diplomat being immune and not liable. This study reveals diplomatic immunity in the context of criminal acts committed by diplomats in the receiving country. Using normative legal English, this study examines applicable legal rules, including the 1961		

Vienna Convention on Diplomatic Relations, national regulations, and various relevant cases. This study also examines the principles of international law governing diplomatic immunity rights and their limitations in criminal cases.	
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Name	: CHRISTIAN SAMUEL	
Title	: THE PURPOSE OF INTERNATIONAL LAW IN THE CASE OF VIOLENCE AGAINST NIGERIAN DIPLOMAT IN INDONESIA	
Category	: THESIS	
Year	: 2022	
University	: University of Hasanuddin	
Description	Previous Research	Research Plan
Issues and Problems:	1. What form does the implementation of the law refer to international conventions take in cases of violence against Nigerian diplomats in Indonesia? 2. How does Indonesia resolve disputes related to cases of violence involving Nigerian	1. How are the legal arrangements related to the Indonesian ambassador involved in a sexual violence case according to the perspective of international law? 2. How is the law of the sending state applied in handling cases of sexual violence from an international law perspective?
Method Research	Normative	Normative
Discussion	Implementation of actions taken by South Jakarta Immigration Office officials as the agency handling cases of violence against Nigerian diplomats in Jakarta, and to determine the form of resolution taken by South Jakarta Immigration Office in cases of violence against Nigerian diplomats in Jakarta	

Name	: RISYA MAURI NURPUTRI SYAHRAN
Title	: ACCOUNTABILITY FOR LEGAL VIOLATIONS BY DIPLOMATIC OFFICIALS FROM THE PERSPECTIVE OF THE " " IN INTERNATIONAL LAW

Category	: THESIS	
Year	: 2023	
University	: University of Sriwijaya	
Description	Preivious Research	Research Plan
Issues and Problems:	1. What forms of violations are committed by diplomatic officials as regulated in international law? 2. How is accountability for violations of law by diplomatic officials viewed from the perspective of international law?	1. How are the legal arrangements related to the Indonesian ambassador involved in a sexual violence case according to the perspective of international law? 2. How is the law of the sending state applied in handling cases of sexual violence from an international law perspective?
Method Research	Normative	Normative
Discussion There must be an agreement between the two parties. In order to establish diplomatic relations between countries, a thorough agreement must be made. The purpose and function of diplomatic relations is to establish relations between countries for the benefit of each country, whether it be political, economic, cultural, or other interests. After an agreement is reached, each country can open a diplomatic mission in accordance with its respective objectives. The next step is to agree on several matters regarding the head of the diplomatic mission, of which there are three categories of representatives as determined in the 1961 Vienna Convention.		

E. Theoretical Basis

The following is a more in-depth theoretical basis for a thesis titled "Accountability for Sexual Violence Committed by Ambassadors in Nigeria from an International Law Perspective":

1. The Theory of Diplomatic Immunity

Diplomatic immunity, commonly known as diplomatic immunity, grants diplomatic officials the right to be exempt from the jurisdiction of the receiving state. This immunity must be respected by the receiving state or local state.¹²

Diplomatic law is essentially a set of provisions or principles of international law that govern diplomatic relations between countries based on mutual agreement, and these provisions are set forth in legal instruments as a result of the codification of international customary law and the development of international law.¹³

The beginning of diplomatic relations between countries was based on customary principles adopted from national practices, but the rapid development of customary principles has led almost all countries in the world to base their relations on these principles. With the rapid adoption of customary law by national practices, these principles have become international practices and are widely accepted as rules followed by the international community.¹⁴ At that time, the principles of International Relations, International Law, and Diplomacy also developed. Each country in conducting relations with one another (country to country) can be done by exchanging diplomatic representatives from each country. The relationship of exchanging diplomatic representatives (envoys) is called diplomatic relations.

State representatives carry out diplomatic missions on behalf of the countries they represent. Therefore, representatives of a country in the country to which they are sent are granted special privileges because they are not ordinary people, but representatives of the countries they represent. It is therefore important for a country to obtain recognition from other countries with which it wishes to establish diplomatic relations.¹⁵ Diplomatic representatives sent by a country will be given special treatment, both by the sending country and the receiving country. Based on the 1961 Vienna Convention on Diplomatic Relations.¹⁶

Indonesia is playing an increasingly important role in international forums. This position has led Indonesia to establish diplomatic relations with many other countries. Diplomatic relations themselves are actually one of the activities of the Republic of Indonesia's foreign policy¹⁷. Diplomatic law is essentially international legal provisions or principles that regulate diplomatic relations between countries based on mutual agreement, and these provisions are set forth in legal instruments as a result of the codification of international customary law and the development of international law.¹⁸ Therefore, diplomatic representation in a country is very necessary.¹⁹

Furthermore, diplomats have diplomatic immunity, which is a principle of international law that protects ambassadors and diplomats from prosecution in the country where they serve. This principle is regulated in the 1961 Vienna Convention on Diplomatic Relations, which states that diplomats cannot be prosecuted in the courts of the receiving country. However, this immunity is not absolute. In cases of serious violations such as sexual violence, there is an argument that immunity cannot be used as a reason to avoid responsibility.²⁰

2. Theory of State Responsibility

The sending state has the primary responsibility to ensure that its diplomatic representatives conduct themselves in a manner consistent with international law and the domestic law of the receiving state. This obligation is not limited to appointing qualified personnel for diplomatic missions, but also includes the ongoing duty to monitor their behavior

¹² Marcel Hendrapati, 1999, Application of the 1961 Vienna Convention: The Case of Two American Diplomats in Jakarta in 1994, Scientific Journal of Law, p. 109

¹³ Syahmin, 1988, "Diplomatic Law: An Introduction," CV. Armico, Bandung, p. 14.

¹⁴ J. G. Starke, 2007, Introduction to International Law Vol. 2, Jakarta: Sinar Grafika, p. 30.

¹⁵ Kadarudin, 2013, *Persona Non Grata in International Law Practice*, Justitia Law Journal, p. 1

¹⁶ Sumaryo Suryokusumo, 1995, Diplomatic Law: Theory and Cases, Alumni Publishers, Bandung, p. 52.

¹⁷ C.S.T. Kansil. 1989. Hubungan Diplomatik Republik Indonesia. Jakarta: Balai Pustaka. p. 3

¹⁸ Syahmin, 1988, Diplomatic Law: An Introduction. Bandung: CV. Armico, p. 14

¹⁹ Edy Suryono, 1992, The Development of Diplomatic Law. Bandung, Mandar, p. 32

²⁰ Vienna Convention on Diplomatic Relations, 1961.

and take corrective action if violations occur. The principle of good faith underlies this obligation, as states are expected to make efforts to prevent diplomatic abuse.²¹

States may also be held responsible for the actions of their ambassadors if those actions are carried out in an official capacity. In such cases, the ambassador's home country may be subject to international sanctions or legal action if it is proven to have failed to prevent or punish acts of sexual violence committed by its representatives. This state responsibility is regulated in the Draft Articles on Responsibility of States for Internationally Wrongful Acts prepared by the International Law Commission.²²

States have an obligation to ensure that their diplomats comply with international law and do not engage in human rights violations. If a state fails to fulfill this obligation, it may be held accountable in an international court. This demonstrates the importance of the role of states in preventing and responding to sexual violence committed by ambassadors.

State responsibility is one of the legal principles underlying international law. The concept of state responsibility recognized in international law consists of two principles, namely the principle of objective responsibility and the principle of subjective responsibility. The principle of objective responsibility, also known as the "risk" theory, states that the legal responsibility of a state is absolute.²³ This means that when an unlawful act occurs, causing harm and carried out by an instrument of the state, according to international law, the state must be responsible to the other (state) that has suffered harm, regardless of whether the act was based on good faith or bad faith.

Conversely, the principle of subjective responsibility, also known as the "fault" theory, asserts that there must be an element of intent (*dolus*) or negligence (*culpa*) on the part of the relevant person before the state can be held legally responsible for the damage caused.²⁴

In response to sexual violence committed by ambassadors internally, the Ministry of Foreign Affairs is drafting a diplomatic code of ethics. Although there is no (written) code of ethics yet, diplomats are bound by the diplomatic professional code of ethics, which is a reference for all foreign services around the world. Due to its regulatory nature, the code of ethics carries at least moral sanctions. However, once Indonesia's diplomatic code of ethics is finalized, these moral sanctions can be reinforced with administrative sanctions such as dismissal from the professional organization, and further strengthen the administrative sanctions currently imposed by the leadership of the Ministry of Foreign Affairs (KEMENLU), including revocation of diplomatic status and even dismissal from civil service status.²⁵

3. Territorial Principle

The territorial principle in international law is a principle which states that a country has sovereignty and full power over its territory, including all persons and objects within it. In other words, a country has the right to apply its own laws (national laws) to all persons and objects within its territorial boundaries, without interference from other countries.²⁶

This territorial sovereignty gives rise to territorial jurisdiction, which is the right or power or authority of a state based on international law to regulate everything that exists or occurs within its territorial boundaries. One manifestation of a state's sovereignty or territorial jurisdiction is the creation and enforcement of its national laws, including its national criminal laws, within its territorial boundaries for any person (whether a citizen or a foreigner) who commits a legal act, including a criminal act, within the territory of the state concerned.²⁷

The application of criminal law according to place is theoretically closely related to the principles explicitly stated in the Criminal Code, namely the territorial principle, the passive

²¹ Ollino, Alice, 2022, *Due Diligence Obligations in International Law* Cambridge University Press, p. 79.

²² International Law Commission, "Draft Articles on Responsibility of States for Internationally Wrongful Acts," 2001.

²³ Malcolm N. Shaw, 2008, *International Law* 6th Edition, Cambridge University Press, New York, p. 195

²⁴ *Ibid.*, Malcolm I, p. 775

²⁵ Mahran Hudi, 2016, *CRIMINAL SANCTIONS AGAINST DIPLOMATIC OFFICIALS FOR LEAKING STATE SECRETS*, Lex Privatum Journal, p. 43

²⁶ <https://fahum.umsu.ac.id/info/asas-hukum-internasional/#:~:text=Territorial%20Principle&text=This%20principle%20stipulates%20that%20a,outside%20the%20territory%20of%20that%20country.>

²⁷ Wayan Parthiana, 2003, *International Criminal Law and Extradition*, Cv. Yrama Widya, p. 12

nationality principle, the active nationality principle, the universal principle, and the extraterritorial principle.²⁸

In this case, the territorial theory applies to the Indonesian ambassador to Nigeria who committed sexual harassment against his own embassy staff. The Vienna Convention states that an embassy is the territorial right of a country and therefore the law applied refers to the national law of the country that owns the embassy.

4. Active Nationality Principle / Personality

This principle is an affirmation of the principle of territoriality. Thus, the active national principle refers to the principle of applying the Criminal Code to Indonesian citizens who commit crimes outside the territory of the Republic of Indonesia. This aims to protect the public (national) interests of Indonesian citizens abroad.

The principle recognized by international law is the basis for a country to apply the laws that apply within its territorial jurisdiction and to apply the law to its citizens who are outside its territorial jurisdiction. Indonesian law regulates the limits of the application of criminal law according to the place where the act occurred, as stipulated in Articles 2 to 9 of the Criminal Code (hereinafter referred to as the Criminal Code).²⁹

This Active National Principle is based on the nationality of the offender. Indonesian criminal law follows its citizens wherever they go. This principle is like a backpack attached to the back of Indonesian citizens wherever they go³⁰. This principle is regulated in Articles 5 to 7 of the Criminal Code. The essence of this principle is stated in Article 5 of the Criminal Code, which reads:³¹

- (1) Criminal provisions in Indonesian legislation apply to citizens outside Indonesia who commit:
 - a. One of the crimes listed in Chapters I and II of Book Two and Articles 160, 161, 240, 279, 450, and 451.
 - b. One of the acts that is considered a crime under Indonesian criminal law, while according to the laws of the country where the act was committed, it is punishable by criminal law.
- (2) The prosecution of cases as referred to in point 2 may also be carried out if the accused becomes a citizen after committing the act.

Article 5 paragraph (1) 1 stipulates a number of articles which, if committed by an Indonesian citizen abroad, shall be subject to Indonesian criminal law. Here, it is not questioned whether the criminal act is considered a crime under the criminal law of the country where the Indonesian citizen is located. Because it is considered to be detrimental to the interests of the Indonesian state, a number of articles in Article 5 paragraph (1) 1 shall remain subject to Indonesian criminal law.

Article 5 paragraph (1) point 2 stipulates that Indonesian criminal law applies to Indonesian citizens outside Indonesia who commit criminal acts that are considered crimes under Indonesian criminal law and are punishable by criminal penalties in the foreign country where the criminal act was committed. Point 2 aims to ensure that Indonesian citizens who commit criminal acts abroad and then return to Indonesia before being tried abroad are not exempt from punishment.³²

²⁸ Ali, M., 2011, "Dasar-Dasar Hukum Pidana," Sinar Grafika, Jakarta, pp. 85-86.

²⁹ Ni Putu Ari Setyaningsih, 2019 "Application of the Principle of Active Nationality to Money Laundering Crimes," Jurnal Aktual Justice Vol.4 No.2, Bali, p. 133.

³⁰ Andi Hamzah, 2008, Principles of Criminal Law, Jakarta, Reneka Cipta, p. 71

³¹ As seen in Article 5 of the Criminal Code

³² Aksi Sinurat, 2023, Principles of Substantive Criminal Law in Indonesia, Nusa Cendana University Research Institute, Kupang, p. 99.

However, Indonesia will not surrender its citizens to be tried outside Indonesia. Paragraph 2 also limits the scope of criminal prosecution to crimes. This means that if an Indonesian citizen commits a crime abroad and returns to Indonesia before being tried abroad, and if the act is considered a violation under Indonesian law (), then he or she will not be tried in Indonesia. Paragraph (2) of Article 5 expands on the matter of prosecution. Thus, if a foreigner commits a criminal act abroad and then flees to Indonesia and becomes an Indonesian citizen, this does not exempt them from criminal prosecution.

This principle is adopted in Article 5 of the Criminal Code or Article 8 of Law 1/2023, which essentially states that Indonesian criminal law provisions apply to Indonesian citizens who commit criminal acts outside the territory of Indonesia. This principle is called the principle of active nationality because it relates to the active nature of a crime committed by a citizen.³³ The complete provisions of the principle of active nationality are as follows.

The meaning is that Indonesian citizens who commit one of the crimes referred to in sub-section I of this article, even if outside Indonesia, can be subject to Indonesian criminal law. If they commit other criminal acts that are considered crimes (not violations) under Indonesian law, they can only be subject to Indonesian criminal law if the act committed is also punishable under the law of the foreign country where the act was committed. This only applies to Indonesian citizens and not to foreign nationals, unless they become Indonesian citizens after committing the act.

In essence, this principle of personality is based on the nationality of the offender. Indonesian criminal law follows its citizens wherever they are. The essence of this principle is contained in Article 5 of the Criminal Code. This principle of personality is further expanded in Article 7 of the Criminal Code, which contains not only the principle of active nationality (the principle of personality) but also the principle of passive nationality (the principle of protection).

The principle of personality and the principle of active nationality are the same, only differing in terminology. The principle of personality or the principle of active nationality is a principle concerning the applicability of Indonesian criminal law, whereby the provisions of Indonesian criminal law apply to Indonesian citizens who commit crimes outside the territory of Indonesia.³⁴

5. Individual Responsibility in International Law

The concept of responsibility for unlawful acts is often referred to in international law using the terms "responsibility" and/or "liability," which have similar or different meanings. Thus, it can be said that there is no standard term for conceptualizing responsibility in international law.³⁵ Peter Malanczuk also considers that the two terms are often used interchangeably, stating that "sometimes the term 'responsibility' is used interchangeably with the term 'liability', but the use of terminology in this respect in the literature is by no means uniform."³⁶

In international law, individuals can be held accountable for human rights violations, including sexual violence. This principle is affirmed in various legal instruments, such as the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination Against Women. Acts of sexual violence committed by individuals, including ambassadors, can be subject to sanctions in international courts, even if they have diplomatic status.³⁷

³³ Oktavira, S. H. B. A., 2023, *The Principles of Active Nationality and Personality in Criminal Law*, PT Justika Siar Publika, <https://www.hukumonline.com/klinik/a/asas-nasionalitas-aktif-lt5b07770d798f2/> , accessed at 21:00 WITA, September 11, 2025.

³⁴ *Ibid.*

³⁵ Titon Slamet Kurnia, 2005, *Reparation for Victims of Human Rights Violations in Indonesia*, PT. Citra Aditya Bakti, Bandung, p. 177

³⁶ Peter Malanczuk, 1997, *Akehurst's Modern Introduction to International Law* 7th Rev. Ed., Routledge, London & New York, p. 254

³⁷ International Criminal Court, "Rome Statute of the International Criminal Court," 1998.

This shows that international law seeks to ensure that no individual is immune from accountability for serious violations. Law enforcement is important to provide justice for victims and prevent the recurrence of violations in the future.

The judicial system often faces challenges in handling cases of sexual violence, including those involving diplomats. The lack of training for law enforcement officials and social stigma against victims can hinder efforts to prosecute perpetrators. Therefore, it is important to identify and address these challenges so that international law can be effectively enforced.

Individuals outside Indonesia who commit criminal acts in Indonesia and Indonesian citizens can be subject to criminal penalties based on the case of an ambassador who allegedly committed sexual violence within Indonesian jurisdiction or at the Indonesian embassy, which is known as the application of the active nationality principle/personal jurisdiction principle. The personal jurisdiction principle (active nationality) means that criminal law applies to all criminal acts committed by citizens wherever they are, whether within or outside the country.

Therefore, alleged criminal acts committed by ambassadors are subject to the applicable sanctions under Indonesian law.³⁸

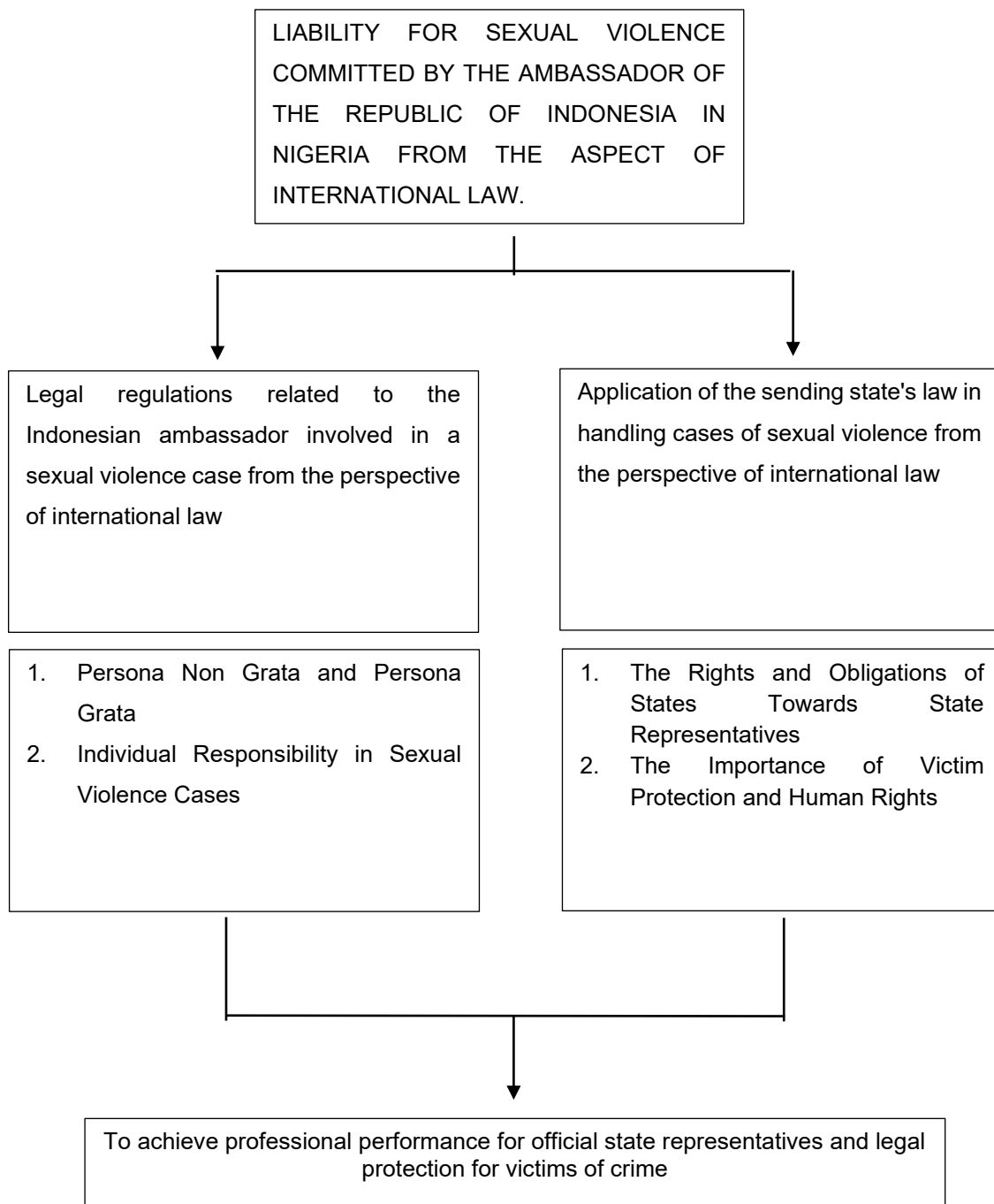
F. Conceptual Framework

In contrast, a conceptual framework is developed by the researcher based on their understanding of the topic, previous research findings, and key concepts. It visually or descriptively represents how different variables interact within the study. While a theoretical framework is strictly grounded in existing theories, a conceptual framework allows greater flexibility in incorporating diverse perspectives. Both frameworks help define the research scope, guide hypotheses or research questions, and establish a logical structure, ensuring a theoretically sound and methodologically robust study.

The thesis of Liability For Sexual Violence Committed By The Ambassador Of The Republic Of Indonesia In Nigeria From The Aspect Of International Law is based on the Vienna Convention 1961. In this thesis there are two things that will be discussed. The first is How is the legal regulation related to the ambassador of the Republic of Indonesia involved in a case of sexual violence according to the perspective of international law, and the second is about How is the application of the sending state's law in handling cases of sexual violence according to the perspective of international law. Furthermore, it will be displayed in the following framework chart.

³⁸ Kifly Arafat Samu, 2018, Legal status of Indonesian citizens involved in international terrorist organizations, *Lex Et Societatis Journal* Vol.IV, No. 10, p. 83

FRAMEWORK CHART



CHAPTER II RESEARCH METHOD

A. Research Type and Approach

The research method used to obtain truth/knowledge about something that we do not yet know and whose truth can be scientifically accounted for.³⁹

The type of research used by the author in this study is normative research. Normative research is research conducted to test applicable norms or provisions, or it can be said to be research conducted by examining reference materials or secondary data.⁴⁰

This study was conducted using the following research approach:

a. Legal Approach

The legislative approach was carried out by reviewing all laws and regulations related to the legal issues being analyzed.⁴¹ such as laws, conventions, statutes, and so on were used as the basic reference materials in this study.

b. Conceptual Approach

In this research, the conceptual approach will focus on providing perspective on the topic and research questions under the legal concept or one of the values contained in the enforcement of a regulation in relation to the concept used.

c. Case Approach

In this research, the case study approach will focus on providing perspectives based on jurisprudence and its relevance to the research topic. The cases will be taken from international courts such as the International Court of Justice and case studies.

B. Types and Sources of Legal Materials

In legal research, research materials are not unknown because in legal research, especially normative research, these materials are obtained from literature. In normative legal research, library source materials are part of secondary legal materials.

a. Primary Legal Materials

Primary legal materials are authoritative legal materials. In this study, primary legal materials consist of legislation, conventions, laws, and others as the basic materials for conducting research.⁴²

b. Secondary Legal Materials

Secondary legal materials are legal materials that include books written by legal experts, legal journals, academic opinions, various legal cases, jurisprudence, and the

³⁹ Kadarudin, 2021, *Research in the Field of Law*, Semarang, Formaci, p. 7

⁴⁰ Irwansyah, 2020, *Legal Research: Methods & Practices of Article Writing*, Yogyakarta: Mirra Buana Media, p. 42.

⁴¹ Peter Mahmud Marzuki, 2009, *Legal Research*, Jakarta: Kencana, p. 93.

⁴² Muhaimin, 2020, *Legal Research Methods*, West Nusa Tenggara: Mataram University Press, p. 59.

latest research results related to the research topic, including laws, books, journals, scientific articles, and other sources of legal literature.⁴³

C. Tertiary Legal Materials

Tertiary legal materials are legal materials that provide guidance on primary and secondary legal materials. These legal materials consist of dictionaries, articles, news, and explanations accessed via the internet.

C. Techniques for Collecting Legal Materials

The legal material collection techniques used in this research involved two methods of searching for legal materials, namely

⁴³ Johny Ibrahim, 2008, *Theory and Methodology of Normative Legal Research*, Surabaya; Bayumedia, p. 295.

1. Literature Study

The data collection method used was to obtain scientific information related to the discussion of theories and concepts relevant to this study.

In addition, the author also studied and cited legal materials from sources in the form of legislation and literature related to this research. Legal materials were obtained from the author's personal collection, the Hasanuddin University central library collection, and the Hasanuddin University Faculty of Law library collection.

2. Internet Access

Legal materials were collected by accessing websites and journals via the internet that were relevant to the legal issues in this study. The legal materials were then analyzed and formulated systematically in accordance with the problems raised in this study.

Literature studies and internet access were conducted to collect relevant information and assist the author in interpreting the immunity rights of a diplomat.

D. Analysis of Legal Materials

This study uses a descriptive analysis method to examine legal materials, using grammatical interpretation techniques for legislation. Through this method, the author aims to provide details on International Diplomatic Law, specifically regarding the responsibility for sexual violence committed by diplomats in Nigeria from an international law perspective.

The descriptive approach allows for a thorough exploration of the relevant legal framework in this case. In the process of interpreting the law, this study uses grammatical interpretation techniques to reveal the meaning of legal provisions based on their common meaning. This approach ensures that the arguments and findings are based on a correct understanding of the law as written. After gathering relevant findings, the author systematically compiled the discussion to provide a clear and logical presentation.

After that, an in-depth analysis is carried out based on these findings, with a focus on the accountability for sexual violence committed by diplomats in Nigeria from the perspective of international law. This analysis explores the legal aspects of this case, especially the regulations, principles involved, and how the law applies to the case under review.