

CHAPTER I

INTRODUCTION

A. Background

The foundation of the contemporary international system is diplomacy. Relations between countries enable nations to interact, negotiate, and resolve disputes peacefully without resorting to military force. The exchange of state representatives, whether through embassies or consulates, is a concrete benefit of this system. They are important tools in promoting cooperation in the economic, educational, and cultural fields, as well as ensuring national security abroad. However, for diplomacy to be effective, diplomats and their staff must not be intimidated or threatened by the country in which they serve.

This reflects the universal principle of special protection and legal balance for national welfare. It is not a personal matter; rather, it is a functional guarantee that allows diplomats to carry out their duties independently without fear of arbitrary actions or legal proceedings. This legal protection is a crucial element of diplomatic efforts. Diplomatic relations are more like a means of communication between governments; they are a network that connects various political, religious, and civilizational systems. The exchange of diplomatic representatives allows countries to build strong infrastructure, reduce misunderstandings, and resolve differences through peaceful means. With diplomats in other countries, a country can discreetly gather information, convey its national interests, and provide assistance to its allies abroad. This is an important aspect that illustrates the relationship between the present and the past.¹

Therefore, if this fundamental principle of protection is violated or fails to be fulfilled by the receiving country, international legal consequences will immediately follow. International Responsibility, often referred to as State Responsibility in international law, is a principle that governs the liability of one country to another due to the fault or negligence of a country that has an impact on another country or person. In the context of diplomatic protection, the failure of the receiving country to take “all

¹ Ian Brownlie, *Principles of Public International Law*, 7th ed. (Oxford University Press, 2008), page 520.

necessary measures” to ensure the safety of a representative is a form of negligence that triggers this responsibility.

Basically, negligence or mistakes committed by a country can have an impact that, if felt by other countries, will give rise to a responsibility known in international law as the principle of international responsibility. The background to the emergence of state responsibility in international law is that no country can enjoy its rights without respecting other countries. Any violation of the rights of another country obliges that country to remedy the violation. This means that the state must be held accountable.²

There are two terms that refer to accountability in international law, namely liability and responsibility. Liability is a broad legal term that refers to almost all characteristics of risk or responsibility, whether certain, contingent, or possible, including all actual or potential characteristics of rights and obligations such as loss, threat, crime, cost, or conditions that create an obligation to comply with the law. Responsibility means that which can be accounted for in relation to an obligation, and includes decisions, skills, abilities, and competence, as well as the obligation to be accountable for the implementation of laws. In practical terms and usage, the term liability refers to legal responsibility, namely liability for damages resulting from mistakes made by a legal subject, while the term responsibility refers to political accountability. In essence, liability refers more to compensation for losses incurred by other parties or repair of damage. Responsibility, on the other hand, refers to accountability as regulated by law.³

To ensure that diplomacy can function effectively, diplomats and their staff must not be subject to threats, intimidation, or coercion from the country to which they are assigned. This reflects the universal principle of special protection and legal immunity, which is intended to serve the interests of national welfare and the stability of international relations. This immunity is not a personal privilege, but rather an absolute functional guarantee that allows diplomats to carry out their duties independently, without fear of arbitrary actions or unfair legal proceedings.

This legal protection is an absolute prerequisite for the smooth functioning of diplomacy. Without this guarantee, relations between countries would be unstable

² Hingorani, *Modern International Law*, 2bd.ed., Oxford & IBH Publishing, New Delhi, 1984, page 241.

³ Ridwan H.R., *Hukum Administrasi Negara*, Raja Grafindo Persada, Jakarta, 2006, page 335-337.

and prone to mistrust, as the safety of their representatives could not be guaranteed. This principle ensures that diplomats can focus on their main mission, which is to promote peace and cooperation, without having to worry about their personal safety. Moreover, diplomatic relations are a network that connects various political, religious, and civilizational systems. This exchange of representatives allows countries to build mutual understanding, reduce misunderstandings, and resolve differences through peaceful means. Therefore, failure to provide protection to representatives is an attack on the very foundations of the international system itself.⁴

To ensure that diplomatic relations continue to flourish, the international community has established a robust legal framework. Primarily, this is set out in the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. These two legal instruments not only define the status and arrival of foreigners, but also explicitly establish the legal obligation of the receiving state to guarantee their safety.⁵ Key articles of the Convention state that the privacy of a diplomatic agent is inviolable (non-negotiable). In other words, the Convention explicitly requires states to “take all necessary measures” to protect the privacy, dignity, or well-being of a person. This obligation is one of the most important in diplomatic law. Regardless of whether the perpetrator is a national or non-national actor, the receiving state still has a preventive responsibility to ensure a safe environment for diplomats.

More specifically, this legal framework focuses these protection obligations on two main articles. The first is Article 29 of the 1961 Vienna Convention on Diplomatic Relations, which states that “The person of a diplomat shall be inviolable. He shall not be subject to any form of detention or arrest. The receiving State shall treat him with the respect due to his rank and shall take all necessary steps to prevent any attack on his person, freedom, or dignity.” This article establishes the principle of personal immunity for diplomatic agents. This principle has two implications: the passive obligation of the receiving state not to commit violence or detain diplomats, and the active obligation to prevent and protect diplomats from acts committed by private or non-state parties.⁶ The same obligation to take all necessary measures to

⁴ Shaw, Malcolm N., *International law*, Cambridge university press, 2017, page 574-575.

⁵ Rebecca M. M. Wallace & Olivia L. B. M. Lomas, *International Law*, 8th ed. (Sweet & Maxwell, 2016), page 299-300.

⁶ Article 29 VCDR 1961

prevent attacks against the person, freedom, and dignity is also repeated in Article 40 of the 1963 Vienna Convention on Consular Relations. This second article states, "The receiving state shall treat consular officers with respect and take all necessary measures to prevent attacks on their person, freedom, or dignity." The repetition of this affirmation in both conventions shows that the protection of the security of foreign representatives is a non-negotiable norm of international law.⁷

Diplomatic functions (VCDR) and consular functions (VCCR) are separated into two different conventions. However, Article 3 Paragraph (2) of the VCDR explicitly states: "Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission." It means that this article provides legal legitimacy that an embassy (diplomatic mission) automatically has the authority to carry out consular duties. This means that there is no need for physical or personnel separation to carry out these two functions. Therefore, Article 29 of the 1961 VCDR and Article 40 of the 1963 VCCR both can be simultaneously applied to the case of Zetro Leonardo Purba based on the argument of functional integration, whereby diplomatic missions are legally permitted to perform consular functions as stipulated in Article 3 paragraph (2) of the VCDR.⁸ Based on these provisions, diplomatic missions have the authority to carry out consular functions, which in practice at many Indonesian embassies, including in Lima, are carried out by the chancellery administration section that deals directly with document services for Indonesian citizens. In this context, Zetro Leonardo Purba served as Junior Chancellery Administrator, a position that is legally classified as a member of the administrative and technical staff in accordance with the provisions of Article 1 letter (f) of the 1961 VCDR. Therefore, the host country's failure to ensure the safety of Zetro Leonardo Purba, as occurred in Lima, constitutes a direct violation of the fundamental norms explicitly stipulated in both legal instruments.⁹

The death of Zetro Leonardo Purba, a member of the Junior Presidential Office at the Indonesian Embassy in Lima, Peru, is an important case study for evaluating the effectiveness of international legal protection standards. According to media reports and official statements, Zetro Leonardo Purba was shot on September

⁷ Article 40 VCCR 1963

⁸ Article 3 (2) VCDR 1961

⁹ Article 1 (f) VCDR 1961

1, 2025, in the Lince district of Lima. The death of Zetro Leonardo Purba, a member of the Junior Presidential Office at the Indonesian Embassy in Lima, Peru, is an important case study for evaluating the effectiveness of international legal protection standards. According to media reports and official statements, Zetro Leonardo Purba was shot on September 1, 2025, in the Lince district of Lima, Peru. Zetro was allegedly followed by the perpetrators after withdrawing money from an automated teller machine (ATM). CCTV footage showed that the perpetrators, on motorcycles, had been monitoring the area around the victim's residence for several days. Upon arriving in front of an apartment building in the Lince district, the perpetrators approached the victim and fired three shots at close range. The shooting happened directly in front of the victim's wife.¹⁰ As a member of the diplomatic staff, Zetro should have been under the protection of all countries, which makes this incident particularly relevant to the Vienna Convention.

This raises the question: did Peru, as the host country, take "all necessary measures" to prevent this tragedy? Although Peruvian journalists and the National Police have conducted investigations, there has been no comprehensive report identifying the perpetrators or masterminds behind the shooting.¹¹ The findings of the investigation, supported by the fact that this internal information is in the public domain, point to a serious conflict between the legal requirements set out in the Vienna Convention and the actual violations on the ground. The Indonesian Ministry of Foreign Affairs' swift response to the Peruvian government's request to handle this case shows that Indonesia views this information as a serious contributor to international law, not as a sign of weakness. This case briefly refers to the principle of immunity from prosecution granted to diplomatic staff and serves as an example of how a country's efforts to protect the rights of its citizens can contribute to the advancement of international law.¹²

¹⁰ BBC News Indonesia, 6 September 2025, "Lima anggota geng ditangkap terkait pembunuhan staf KBRI di Peru – Bagaimana perkembangan investigasi sejauh ini?" page 4 <https://www.bbc.com/indonesia/articles/c98d14e73520> accessed on October 14, 2025.

¹¹ Portal Kemlu RI, 10 September 2025, "Kementerian Luar Negeri Beri Penghormatan Terakhir untuk Almarhum Zetro Leonardo Purba," page 1 <https://kemlu.go.id/berita/berita/kementerian-luar-negeri-beri-penghormatan-terakhir-untuk-almarhum-zetro-leonardo-purba?type=publication> accessed on October 14, 2025.

¹² Ibid page 3.

The tragic death of Zetro Leonardo Purba highlights the huge gap between what international law stipulates and how it is applied domestically. Although the Vienna Convention clearly provides protection for diplomats, this shooting incident shows that such protection is not always effective in the real world. The host country's responsibility to "take all necessary measures" is not enough to prevent tragic incidents in public places, which should be safe for diplomats. This discrepancy creates a legal problem: on the one hand, there is clear and binding international law. On the other hand, there is a lack of practical law enforcement, which highlights the weakness of law enforcement in the host country. Zetro's case clearly shows that the success of international law depends not only on the existence of regulations, but also on the political commitment and law enforcement capabilities of each country.

The failure of the Peruvian state to protect Zetro Leonardo Purba, an individual protected by international law, highlights a very important legal principle: state responsibility. This principle states that if a state fails to fulfill its international legal obligations—either by committing unlawful acts or by failing to act—then that state must be held responsible for the failure.¹³

In this situation, the Peruvian government's inability to stop the shooting and the fact that the case has not been resolved can be considered an illegal act under international law. As a result, Peru must provide compensation to the aggrieved country, namely Indonesia. Such compensation can take the form of money, official acknowledgment of wrongdoing, or guarantees that similar incidents will not be repeated. Therefore, the principle of state responsibility is the legal basis for Indonesia to seek justice, not only through diplomatic channels but also through international law.¹⁴ Beyond its educational value, this research is particularly important for real-world issues, especially for Indonesian diplomacy. Examining the Zetro case can help the Indonesian Ministry of Foreign Affairs devise a plan to seek justice.¹⁵ This research will explain the international rules that the government can

¹³ James Crawford (2013), *State responsibility: the general part* (No. 100), Cambridge University Press, page 75-80.

¹⁴ Article 2 International Law Commission (ILC), *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001).

¹⁵ Huala Adolf, *Aspek-Aspek Hukum Internasional dalam Perwakilan Diplomatik dan Konsuler*, page 34.

use to persuade Peru to conduct a thorough investigation, find those responsible, and fulfill its obligations under the Vienna Convention.

Furthermore, from this research can help improve protection for all Indonesian diplomats working abroad, ensuring that similar undesirable events do not occur again. These considerations prompted the author to conduct research and write a thesis entitled **“State Obligations for Diplomatic Staff (Case Analysis of Zetro Leonardo Purba Based on the Vienna Convention.)”**

B. Problem Statement

1. Has Peru, as the receiving state, fulfilled its obligations to provide protection and security guarantees as required by Article 29 of the 1961 Vienna Convention and Article 40 of the 1963 Vienna Convention in the case of the death of Zetro Leonardo Purba?
2. How can the principle of state responsibility in international law be applied to seek justice for the Peruvian state's failure to protect Zetro Leonardo Purba, and what legal implications might this have?

C. Purpose and Benefits of Research

Based on the formulation of the above problems, the research objectives as follows:

1. To analyze and evaluate how Peru, as the receiving state, has fulfilled its obligations of protection and security explicitly mandated by Article 29 of the 1961 Vienna Convention and Article 40 of the 1963 Vienna Convention in the case of the death of Zetro Leonardo Purba.
2. To analyze and apply the principle of State Responsibility in international law as a legal framework for seeking justice for the failure of the State of Peru to protect Indonesian diplomatic staff, as well as to identify the legal implications that may arise from the application of this principle.

From the results of this study is expected to provide theoretical and practical benefits, as follows:

1. Theoretical Benefits

Theoritically, this research provides an in-depth analysis of the positive obligations of the receiving state, as required by Article 29 (1961) and Article 40 (1963). This contributes to a stronger and more definitive interpretation of the standards of protection that must be met by the host state. This research serves as a contemporary case study that examines the application of the principle of state responsibility to breaches of protection obligations arising from the Vienna Convention. The results will enrich the literature on the attribution of state negligence in the context of attacks by non-state actors.

2. Practical Benefits

Practically, this research provides a strong and structured basis for international legal arguments. These findings can be used as a diplomatic advocacy tool to pressure the Peruvian government to conduct a thorough investigation and demand reparations in accordance with the principle of State Responsibility. This case reaffirms the principle of state responsibility and encourages other recipient states to increase their commitment to the Vienna Convention. This indirectly contributes to strengthening the integrity of the global diplomatic system and ensuring the safety of diplomats around the world.

D. Research Originality

1.	Author Name	: Javier Edbert
	Writing Title	: KEKEBALAN DIPLOMATIK DALAM KASUS PEMBUNUHAN YANG DILAKUKAN KELUARGA DIPLOMAT DI NEGARA PENERIMA BERDASARKAN KONVENSİ WİNA TAHUN 1961
	Categories	: Thesis
	Year	: 2024
	College	: Sriwijaya University
	Description	Previous Research
	Issues and Problems	: 1. How does the 1961 Vienna Convention
		Research Plan
		1. To understand and explain the role of the

	regulate criminal acts committed by diplomatic representatives? 2. Why are the families of diplomatic representatives also protected by diplomatic privileges and immunities? 3. What is the legal process for criminal acts committed by diplomatic representatives and/or their families?	1961 Vienna Convention on Diplomatic Relations regarding criminal acts involving diplomatic representatives. 2. To understand and explain why the families of diplomatic representatives also receive protection in the form of diplomatic privileges and immunities. 3. To understand and explain the legal process for criminal acts committed by diplomatic representatives and/or their families.
Methods	: Normative	Normative
Results and Discussion	: Based on the results of research from a thesis entitled “Diplomatic Immunity in Cases of Murder Committed by Diplomatic Families in the Receiving State Based on the 1961 Vienna Convention,” the focus of	

the study lies on the dynamics of diplomatic immunity, particularly those involving members of diplomatic families. The main finding of this study concludes that the 1961 Vienna Convention does not specifically address criminal acts that occur within the scope of diplomatic work. Instead, the Convention emphasizes the obligation of diplomatic representatives to comply with local laws. Diplomatic immunity is granted based on administrative reasons and customary international law practices because diplomats and their families are considered to represent the leaders of sovereign states. Regarding legal settlement mechanisms, this study identifies alternative dispute resolution methods that can be pursued before a case is brought to the International Court of Justice, namely through

		arbitration (PCA) and conciliation.	
2.	Author Name	: Anselmus Bimmasakty	
Writing Title		: TANGGUNG JAWAB NEGARA LIBYA TERHADAP KEAMANAN PEJABAT DIPLOMATIK YORDANIA DITINJAU DARI KONVENSI WINA 1961 (Studi Kasus Penculikan Duta Besar Yordania di Tripoli Libya)	
Categories		: Thesis	
Year		: 2021	
College		: Atma Jaya University Yogyakarta	
Description		Previous Research	Research Plan
Issues and Problems		: What are Libya's responsibilities as the receiving state Regarding the security of Jordanian diplomatic officials according to the 1961 Vienna Convention on Diplomatic Relations?	To determine Libya's responsibilities as the receiving state regarding the security of Jordanian diplomatic officials according to the 1961 Vienna Convention on Diplomatic Relations
Methods		: Normative	Normative
Results and Discussion		: Based on the results of the discussion of the thesis entitled Libya's Responsibility for the Security of Jordanian Diplomatic Officials as Reviewed by the 1961 Vienna Convention (Case Study of the Kidnapping	

of the Jordanian Ambassador in Tripoli, Libya), it was concluded that Libya, as the receiving state, had failed to fulfill its primary obligations as stipulated in Article 29 of the 1961 Vienna Convention. Libya's failure to take appropriate measures to prevent attacks on the Jordanian Ambassador, Fawaz al-Itan, leading to his abduction, is categorized as an International Wrongful Act. However, Libya has fulfilled its responsibility by forming an investigation team and making concrete efforts to secure the ambassador's release. This thesis analyzes that the most appropriate form of accountability to restore the moral damage suffered by the State of Jordan is Satisfaction, which can take the form of an acknowledgment of the violation or a formal

apology from the State of Libya.	
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E. Theoretical Basis

1. Theory of Functional Necessity

Relations between countries based on diplomatic law are becoming increasingly intense, with a strong desire to protect the interests of each country. The urgency of relations between countries lies in helping countries fulfill their responsibility to ensure the safety of their citizens in neighboring countries. Diplomatic law is a set of standards that helps countries create clear regulations and prevent one country from harming another. In addition to the responsibility of maintaining relations between countries, permanent representatives in the receiving country are also tasked with protecting and assisting their citizens in the receiving country. Diplomatic representatives are defined as representatives of a country, and their position is equivalent to that of the head of the sending country in the receiving country. International law has established guidelines in accordance with several obligations imposed by the sending country on permanent representatives and other diplomatic missions, with the receiving country granting diplomatic immunity as a form of good behavior and ethics in relations between the two countries.

The actions of a country in recognizing the representatives of the sending country essentially represent the country and its government, and prevent the receiving country from encouraging the representatives to act outside the scope of their duties. This practice has been accepted by many countries in international relations and diplomatic law. More and more people are involved in diplomatic and consular relations to create international customs. International customary law in the field of diplomatic and consular relations serves as a tool for countries to conduct their relations with one another.¹⁶

¹⁶ Putut Gunawarman, Tinjauan Hukum Internasional Atas Insiden Penundaan Upacara Credential Duta Besar Republik Indonesia Di Brasil, Jurnal IUS Vol.02 No.01, Maret 2015, page 27.

Its development in the dynamics of diplomatic relations cannot be ignored, especially violations of international law provisions, particularly those related to the protection of diplomatic officials. The existence of diplomatic relations with the immunity and privileges referred to can play a role in achieving the objectives of establishing diplomatic relations.¹⁷

The main purpose of diplomatic relations is officially stipulated in Article 3 Paragraph 1 of the 1961 Vienna Convention on Diplomatic Relations. This provision regulates the five main functions that must be carried out by diplomatic missions. These functions are essentially the objectives of diplomatic relations themselves, and are designed to ensure that interactions between countries can take place in an orderly and mutually beneficial manner. The two main functions regulated in the 1961 Vienna Convention are the function of representing the sending state in the receiving state and the function of protecting the interests of the sending state and its citizens. The representative function makes the Diplomatic Mission a symbol of the sending state's sovereignty abroad, while the protective function is essential to guarantee the rights and safety of citizens in foreign territory.

In addition, diplomatic missions carry out the important task of negotiating with the government of the receiving country and reporting back to the sending country. The negotiating function makes diplomacy a key tool for achieving peace and cooperation, as it provides a means of resolving disputes and formulating agreements without violence, without which countries cannot exist in isolation. The purpose of diplomatic relations is to promote friendly relations and develop economic, cultural, and scientific ties between the two countries. This function explicitly leads to increased mutually beneficial cooperation, contributing to world peace and prosperity.¹⁸

Based on Functional Theory, diplomatic missions and diplomatic immunity are based on functional needs so that diplomatic personnel can carry out their duties. This theory emphasizes the importance of granting diplomatic immunity to diplomatic personnel so that they can carry out their duties to the best of their ability. To balance

¹⁷ Anggraeni, Shelve Christine. (2020), Pelanggaran Hak Kekebalan Pejabat Diplomatik Ditinjau Dari Hukum internasional: Studi Kasus Pencegahan Duta Besar Italia oleh India. Journal education and development Vol.8 No.1 edisi Februari 2020 page 8.

¹⁸ Article 3 of the Vienna Convention on Consular Relations.

the needs of the sending country and the rights of the receiving country, diplomatic functions must be carried out openly and practically. Diplomatic immunity for diplomatic officials is very important for the smooth running of diplomatic representatives' duties in representing the sending state.¹⁹

The theory of functional necessity is the main basis for granting immunity and privileges to diplomats, so that they can carry out their duties and missions effectively in the host country. This theory highlights the importance of primary functions, which ultimately limit the scope of immunity and privileges. The theory of functional necessity is crucial, because without these rights, a diplomatic envoy would be unable to fulfill their duties. According to this theory, diplomatic envoys can be held accountable for legal or political interventions arising from their personal behavior, depending on the legal system of the country in which they are stationed. Furthermore, immunity is granted to ensure comfort and protection without interference in the performance of their responsibilities and duties. This theory is more practical and is often widely applied in the field of diplomatic law.²⁰

The application and use of the theory of functional necessity is strongly supported by various experts. One of them, according to Sir Gerald Fitzmaurice, who was selected by the International Law Commission to contribute to the drafting of the 1961 Vienna Convention, is that this theory is the most accurate explanation of the reasons for granting diplomatic immunity and privileges. Without these rights, diplomatic envoys would not be able to carry out their roles in the host country. Furthermore, the Committee of Experts for the Progressive Codification of International Law stated that the main foundation of diplomatic relations is the necessity to maintain the dignity of diplomatic envoys and their home countries.²¹

Sumaryo Suryokusumo explained that there are three main rationales for granting immunity and privileges to diplomatic envoys. The first is that they act as representatives of their sending countries to the receiving countries. second, granting

¹⁹ Sentosa, Ali, et al. "Tinjauan Hukum Internasional terhadap Diplomat yang Melakukan Tindakan Melawan Hukum Dihubungkan Kekebalan Diplomatik." *Sumatra Journal of International Law*, vol. 1, no. 1, 2013, page 25.

²⁰ Safitri, A. D. (2022). *PENYALAHGUNAAN HAK KEKEBALAN DIPLOMATIK DITINJAU DARI KONVENSI WINA 1961 (Studi Kasus: Penyerangan Diplomat Nigeria kepada Staf Imigrasi Indonesia)* (Doctoral dissertation, Universitas Pembangunan Nasional Veteran Jakarta) page 11.

²¹ *Ibid* page 12.

these rights maximizes the effectiveness of diplomatic envoys, because without them they would be dependent on the goodwill of the government, which could affect individual security considerations, and third, if there are communication barriers, diplomatic envoys cannot perform their duties optimally. Therefore, Sumaryo Suryokusumo agreed that the granting of diplomatic immunity and privileges is based on the theory of functional necessity, which was even applied by the 1961 Vienna Convention in granting these rights.²²

2. Theory of State Responsibility

The theory of state responsibility is an important concept in international law that stems from the legal personality of states as the main subjects in the international legal system. The basic principle of this theory states that any act that is internationally considered wrongful committed by a state will result in international responsibility for that state. This responsibility does not arise from national law, but is entirely determined by international law. The basic principle of this theory asserts that any international violation committed by a state will result in international responsibility for that state. This responsibility does not originate from national law, but is entirely governed by international law.²³

Legally, state responsibility arises when an act, which may be an action or an omission, fulfills two cumulative elements as stipulated in Article 2 of the ILC Draft Articles 2001: (1) the conduct is attributable to the state under international law, and (2) the conduct constitutes a breach of the international obligations of the state concerned. In the context of attacks by third parties or non-state actors, the state is not directly responsible for the criminal acts of those individuals, but is responsible for its own failure to prevent or respond to the attacks appropriately.²⁴

An act can be attributed to the state if it is carried out by a state institution, including those in the legislative, executive, or judicial branches, regardless of their position in the state structure. The inability of security institutions, such as the police or the ministry of home affairs, to carry out their duty of protection is considered a

²² Sumaryo Suryokusumo, 2013, *Hukum Diplomatik dan Konsuler*, PT Tata Nusa, page 58.

²³ Article 1 of ILC Draft Articles on State Responsibility 2001.

²⁴ CJ Reports, *United States Diplomatic and Consular Staff in Tehran Case* [USA vs Iran], 1980, page 3.

form of omission that can be directly attributed to the state as a violation of its obligations.²⁵

Responsibility in law is a concept that arises when there is a violation of the rules and principles that apply in law, both domestic and international law. In international law, responsibility is considered an important underlying principle. This principle focuses on the cause of an action, the impact of that action which violates the law, and the provision of compensation as a form of justice.²⁶

This is also in line with the opinion of the International Court of Justice in the Chorzów Factory case, which states that accountability is a broader principle of international law, that any violation of an agreement will create an obligation to take corrective action (duty of reparation). The two points that the author emphasizes are that responsibility is an obligation arising from actions that have been taken, and that responsibility requires reparation that is recognized by law. In general, responsibility is an effort made by a legal subject to repair something that has been damaged or restore conditions to what they were before the violation of the law occurred.²⁷

The main legal implication of state responsibility is the obligation to provide full reparation for the damage caused, both material and moral. This reparation aims to eliminate all consequences of the wrongful act and restore the situation to its original state as if the wrongful act had never occurred.²⁸

3. Theory of Inviolability (Non-negotiable)

The Theory of Inviolability is the most fundamental and oldest norm in international law that guarantees the physical safety and dignity of foreign diplomatic personnel from any form of interference by the authorities or third parties in the receiving country. This principle is legally enshrined in Article 29 of the 1961 Vienna Convention (VCDR), which states that the person of a diplomatic agent shall be inviolable. The essence of this theory is to create a “safe space” for state

²⁵ Jan Klabbbers, *International Law*, 2017, page 131.

²⁶ Ian Browlie Op. Cit. page 431-432.

²⁷ Malcolm N. Shaw Op. Cit. page 195.

²⁸ Ian Browlie Op. Cit. page 442.

representatives so that they can carry out their country's mission without physical or legal intervention from any party.²⁹

Technically, the Theory of Inviolability encompasses two dimensions of obligations for the receiving state: negative obligations and positive obligations.³⁰ The negative obligation requires the receiving state and its authorities (police, military, prosecutors) to refrain from any coercive measures such as arrest, detention, or seizure of protected personnel.³¹ Meanwhile, positive obligations require the receiving state to take "all appropriate steps" to prevent any attacks on the person, freedom, or dignity of such personnel by non-state actors or private parties.³² The failure of states to fulfill this positive obligation, as affirmed by the International Court of Justice (ICJ) in the Tehran Hostages case in 1980, constitutes a serious violation of the international obligations of the receiving state.³³

The scope of protection under the theory of inviolability is absolute and inherent to personnel while they are within the sovereign territory of the receiving state.³⁴ This protection is not limited by official working hours or the location of the representative's office, but rather follows the physical presence of the personnel 24 hours a day. This is based on the idea that any disturbance to the personal security of a representative, even if it occurs in a public space or during personal activities, is still considered an insult to the dignity of the sending state that he or she represents.³⁵ Therefore, inviolability is a legal shield that cannot be set aside by any domestic situation in the receiving country.³⁶

In its development, the theory of inviolability is not only intended for Ambassadors, but is explicitly extended to administrative and technical staff through Article 37 Paragraph 2 VCDR (Vienna Convention on Diplomatic Relations, 1961, Art. 37(2)), which reads, "Members of the administrative and technical staff of the mission, as well as members of their families forming part of their respective households, if they are not nationals or permanently resident in the receiving State, shall enjoy the

²⁹ Sir Ivor Roberts, *Satow's Diplomatic Practice*, 2017, page 98.

³⁰ Malcolm N. Shaw Op. Cit. page 598.

³¹ Article 29 VCDR Op. Cit.

³² Jan Klabbbers Op. Cit page 143.

³³ ICJ Reports Op. Cit. page 3.

³⁴ Sir Ivor Roberts Op. Cit. page 102.

³⁵ Eileen Denza Op. Cit. page 211.

³⁶ Article 29 VCDR Op. Cit.

privileges and immunities set forth in Articles 29 to 35.”³⁷ This expansion is intended to provide the entire diplomatic mission ecosystem with uniform physical protection to ensure the smooth functioning of the sending country's administrative functions.³⁸ Thus, any physical attack that results in the loss of life of administrative staff, as in the case of Zetro Leonardo Purba, is legally a direct violation of the principle of inviolability, which should be fully guaranteed by the Peruvian security authorities.³⁹

4. Theory of Due Dilligence (Appropriate Accuracy Standards)

The duty to exercise due diligence is a legal responsibility that requires states to make every effort deemed reasonable to prevent and reduce violations of international law by third parties, whether non-state actors or other states. This duty of care arises as a requirement for states to take all effective measures to ensure that no harm is caused to other states originating from their territory, particularly in the context of the protection of foreigners and the law of neutrality, as well as in other specific aspects of international law.

The theory of due diligence in international law is a standard of conduct that requires states to take serious and adequate measures to prevent violations of international law or harm to protected subjects within their territory. Unlike the obligation of result, due diligence is an obligation of conduct, whereby a state is not considered guilty simply because a crime has occurred, but is considered guilty if it has failed to make the maximum effort that should have been made to prevent the crime.⁴⁰ This principle affirms that the state is not an “absolute insurer” for every individual, but that the state has a responsibility to prove that the security authorities have acted preventively in accordance with their capacity.⁴¹

Legally, the basis for applying due diligence to diplomatic protection is Article 29 of the 1961 Vienna Convention (VCDR), which requires the receiving state to take “all appropriate steps” to prevent attacks on protected personnel.⁴² This “appropriate measure” standard is measured through due diligence parameters, whereby recipient

³⁷ Article 37 of the 1961 Vienna Convention on Diplomatic Relations.

³⁸ Jan Klabbbers Op. Cit. page 144.

³⁹ Sir Ivor Roberts, *Satow's Diplomatic Practice*, 2023, page 102.

⁴⁰ Berkes, A. (2018). The standard of 'Due Diligence' as a result of interchange between the law of armed conflict and general international law. *Journal of Conflict and Security Law*, 23(3), page 1.

⁴¹ ILC Commentary Op. Cit. page 34.

⁴² Article 29 Op. Cit.

countries must adjust their level of protection to the level of threat or risk in their territory.⁴³ The International Court of Justice (ICJ) in the case of United States Diplomatic and Consular Staff in Tehran (1980) emphasized that a state's failure to act or the inability of security forces to respond to threats against diplomatic missions constitutes a clear violation of the duty of due diligence.⁴⁴

Key elements in measuring due diligence compliance are the criteria of foreseeability and capacity.⁴⁵ A country is considered to have violated due diligence if the security authorities actually knew or should have known about the security risks but did not take adequate preventive measures to neutralize those risks.⁴⁶ In the context of attacks against diplomatic staff such as Zetro Leonardo Purba, Peru would be liable if it could be proven that local authorities failed to identify threats in the area or failed to provide protection commensurate with the victim's status as internationally protected personnel.

Violations of due diligence standards result in such acts being categorized as internationally wrongful acts by omission.⁴⁷ Although the shooting was carried out by non-state actors, Peru's international responsibility still arises because the state failed to fulfill its legal obligation to act with the level of diligence required by international law.⁴⁸ Therefore, due diligence becomes a vital legal instrument for the sending state (Indonesia) to demand accountability and reparations for the receiving state's failure to maintain the physical integrity of its diplomatic personnel.⁴⁹

The duty of care serves as an obligation to protect against illegal acts horizontally. In the realm of general international law, this responsibility initially emerged in jurisprudence as the obligation of sovereign states to protect foreign states and their citizens within their territories. One of the early court decisions explaining this standard was the 1872 Alabama Claims Arbitration case concerning the responsibility of neutral states. The arbitration decision viewed the standard of duty of care as an elastic concept that 'should be applied by neutral governments in

⁴³ Eileen Denza Op. Cit. page 211.

⁴⁴ ICJ Reports Op. Cit. page 3.

⁴⁵ Riccardo Pisillo-Mazzeschi, *The Responsibility of States for Acts of Private Individuals*, 1992, page 44.

⁴⁶ Timo Koivurova, *Due Diligence in International Law*, 2010, page 5.

⁴⁷ Article 2 of ILC Draft Articles on State Responsibility, 2001.

⁴⁸ James Crawford Op. Cit. page 221.

⁴⁹ Malcolm N. Shaw Op. Cit. page 595.

proportion to the risks that either party to the dispute might face as a result of non-compliance with their neutrality obligations.

The substantive obligations of neutral governments are set out in a bilateral agreement, the Washington Convention, which stipulates that neutral governments are obliged to “exercise due diligence to prevent” the installation, procurement of weapons or equipment, or departure, from its territory, “from any ship that has reasonable grounds to be suspected of being intended to sail or wage war against a country with which it is at peace.” This provision of reasonable vigilance became the basis for the adoption of the first multilateral treaties on neutral powers several decades later, in 1907 and 1928 - both of which established the same duty of vigilance. Referring to the Alabama decision, the duty of caution by neutral states was considered to have “become a binding custom” by the end of the 19th century, and was also used as a reference by the International Law Commission (ILC) in its reports discussing state responsibility and international responsibility for harmful effects arising from acts not prohibited by international law.⁵⁰

The obligation of neutral states to exercise supervision within their territories in order to prevent violations of their neutrality has been extended to protect foreign nationals in cases where they seek compensation for injuries sustained during civil wars. In the context of the Spanish Zone in Morocco, arbitrator Max Huber referred to the duty of care of neutral states to conclude that states must act with the same level of vigilance, namely taking measures that could reasonably be expected to ensure the safety of foreign nationals in the territory. The provisions contained in the basic agreement on neutral states reinforce the concept later emphasized by the International Court of Justice (ICJ) as a ‘general and widely recognized principle’, which states that every state has ‘an obligation not to allow its territory to be used deliberately for actions that violate the rights of other states’. The ICJ also applied this general principle to aspects of international environmental law.

Using the same judicial approach, referring to LOAC, namely Article 43 of the Hague Regulations on the Laws and Customs of War on Land, the ICJ extended the

⁵⁰ Hessbruegge, J. A. (2003). The historical development of the doctrines of attribution and due diligence in international law. *NYUJ Int'l. L. & Pol.*, 36, page 265.

standard of care to occupying powers in the case of *DRC v. Uganda*. This article requires occupying powers to “take all measures available to restore and maintain, as far as possible, public order and security, while respecting, unless absolutely impossible, the laws in force in the country.”

Although Article 43 does not explicitly establish a duty of care to protect against the actions of individuals, the ICJ interpreted this as ‘an obligation to ensure respect for international human rights law and international humanitarian law, to protect the population of the occupied territory from violence, and not to allow such violence to be committed by any third party’. The ICJ also interpreted the obligation to prevent genocide under Article I of the Genocide Convention as the responsibility of states to “use all reasonable means available to them to prevent genocide as far as possible.” The cases mentioned above show that in the context of LOAC, the duty of care has expanded to many situations beyond the protection of foreign states and their citizens. The evolving obligations in LOAC have clarified the general understanding of the duty of care in international law. It can be described as the obligation of states to take all possible measures to prevent or respond to violations of international law, even if the occurrence of indirect harm does not prove that the duty of care has been breached.

Furthermore, early arbitration decisions indicate that under the standard of diligence, states have a responsibility to protect against the illegal conduct of individuals or entities whose actions cannot be attributed to the state, in contrast to the actions of state agents, which are automatically considered to be the actions of the state itself. The International Court of Justice (ICJ) has also emphasized that the state's duty of vigilance includes protection of “individuals or groups not directly under their authority”.⁵¹

F. Framework

This framework begins with an in-depth analysis and critical evaluation of whether Peru, as the receiving state, has fulfilled its protection and security obligations explicitly mandated by Article 29 of the 1961 Vienna Convention on Diplomatic Relations and Article 40 of the 1963 Vienna Convention on Consular

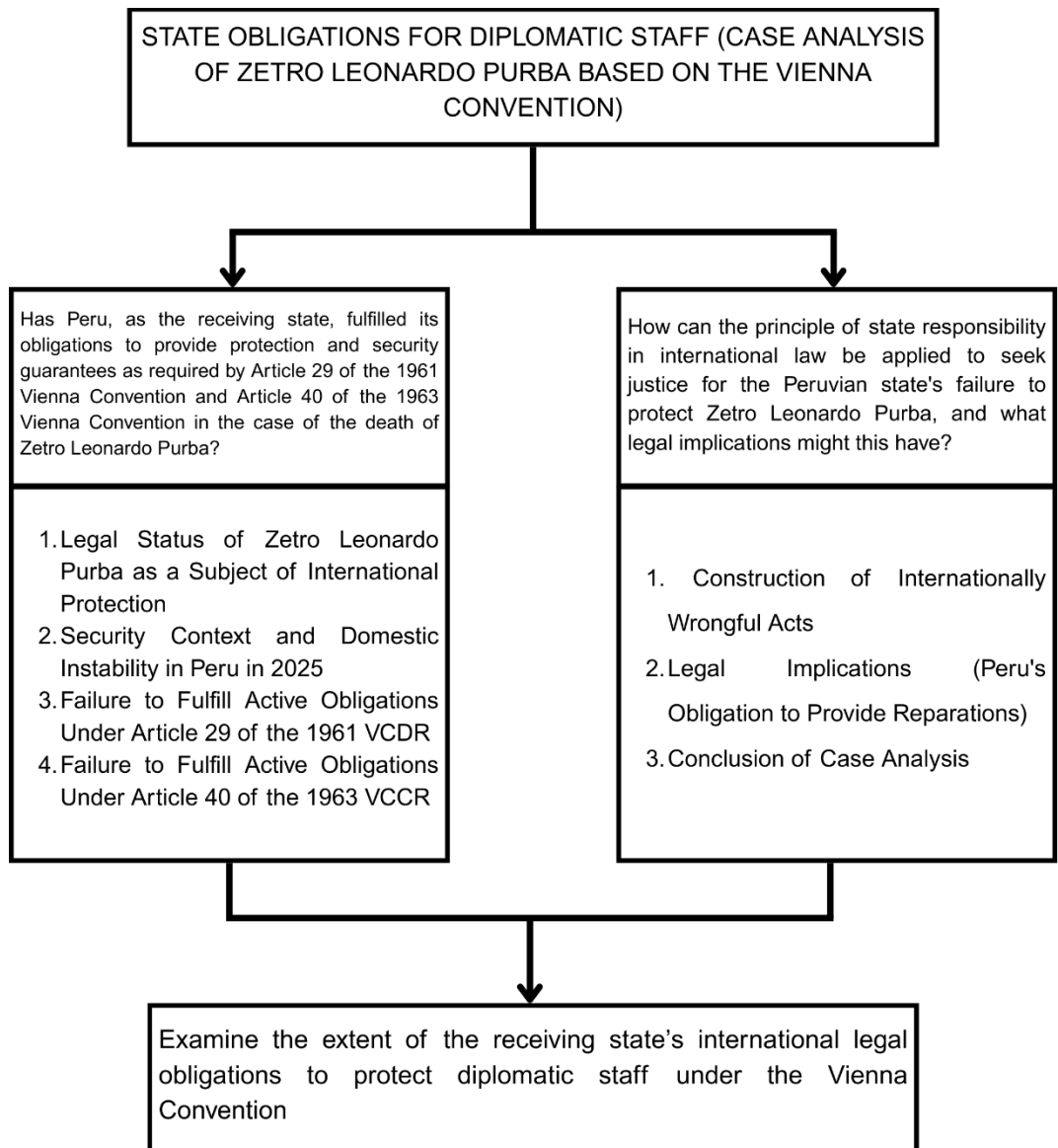
⁵¹ Berkes, A. Op. Cit. page 5.

Relations in the tragic context of the death of Zetro Leonardo Purba, an Indonesian diplomatic staff member. This evaluation includes an assessment of the preventive measures, threat responses, and security mechanisms implemented by Peruvian authorities, with a focus on whether these failures violate international norms that bind receiving states to safeguard the integrity and safety of diplomatic and consular personnel.

This framework further explores the application of the principle of state responsibility in international law as a comprehensive legal framework for seeking justice for Peru's failure to protect Indonesian diplomatic staff, by identifying legal implications such as reparation obligations, diplomatic sanctions, or even escalation to international dispute resolution mechanisms such as the International Court of Justice. By determining Peru's responsibility for this failure, based on violations of Article 29 of the VCDR and Article 40 of the VCCR, Indonesia has a strong and solid legal basis for demanding reparations, whether in the form of financial compensation, an official apology, or security policy reforms.

The application of this principle of state responsibility not only aims to seek justice for the victims and their families, but also plays a role in strengthening the integrity of the Vienna Convention as a whole, as well as strengthening the global diplomatic and consular protection system, ensuring that security guarantees for all foreign missions are respected and upheld invariably by all receiving countries, thereby preventing similar incidents in the future and maintaining the stability of international relations.

1. Frame of Mind Chart



CHAPTER II

RESEARCH METHODOLOGY

A. Research Methods

In this research, the author uses a descriptive-analytical type of research and, in terms of its purpose, it falls under Normative Legal Research. This research examines and analyzes legislation and international legal instruments related to diplomatic protection obligations and the principle of state responsibility for negligence. The focus of discussion in this legal paper is to find legal principles and norms that can be used to answer the legal issues that have been raised. This legal writing is conducted as an academic study closely related to efforts to contribute ideas or concepts in the dynamics of legal science development, particularly Public International Law, through the discovery of legal arguments and concepts in line with the issues raised.

B. Types and Approaches of Research

This research is classified as Normative Legal Research, which focuses on the study of rules of law and international legislation. This study analyzes legal norms or regulations as part of a system related to a specific legal event (the death of Zetro Leonardo Purba). The purpose of this research is to provide legal reasoning in assessing whether an event violates international obligations and to determine the appropriate legal action for that event.

The legal material used is secondary legal material obtained from books, documents, research results in the form of reports, theses, journals, and official UN documents. After the materials were collected, they were processed by clarifying the existing materials in accordance with the issues being studied and separating irrelevant legal materials so that the data analysis could focus on the appropriate materials. The materials were processed by systematically organizing the written legal materials logically, which means that there are relationships and connections between one legal material and another to obtain an overview of the research results. A distinctive feature of this research is the use of formal legal sources and the

objective of analyzing applicable law, which consists of primary, secondary, and tertiary legal materials.

1. Statute Approach

This approach is basically carried out by reviewing all international agreements and legal instruments relevant to the issues at hand. In this research, the Statute Approach will focus on legal sources derived from international instruments, namely:

- a. The 1961 Vienna Convention on Diplomatic Relations
- b. The 1963 Vienna Convention on Consular Relations
- c. ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts 2001 (as a source of international customary law regarding state responsibility).

2. Conceptual Approach

This approach is a method in legal research that offers an analytical perspective in problem solving, with an emphasis on the legal concepts or values embedded in the applied norms. In this research, the Conceptual Approach aims to provide an understanding of the topic and problem formulation by examining the main legal frameworks:

- a. The Concept of Positive Obligation to Prevent and Protect
- b. The Concept of Inviolability.
- c. The Concept of State Responsibility and elements of Internationally Wrongful Acts.