

LIMITATIONS OF THE STATE'S OBLIGATIONS IN PROVIDING CONSULAR PROTECTION TO INDONESIAN CITIZENS WHO HAVE BEEN DEPORTED BASED ON THE 1963 VIENNA CONVENTION

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Abstract

Deportation of foreign nationals is an administrative action taken by the receiving country as part of immigration law enforcement based on the principle of state sovereignty. In practice, deported Indonesian citizens (WNI) often apply for protection to Indonesian consular representatives abroad. This situation has given rise to debate regarding the extent of the obligations of the country of origin to provide consular protection, especially when the deportation decision has been made by the receiving country's authorities. This study aims to analyze the obligations and limits of state consular protection for deported Indonesian citizens based on the 1963 Vienna Convention on Consular Relations, as well as to examine the challenges and practices of Indonesian consular protection. This study uses a normative legal research method with a legislative approach and a conceptual approach. The results show that consular protection is an international legal obligation of the country of origin, but is limited and cannot intervene in the receiving country's authority to impose deportation. The consular role focuses more on consular access, assistance, information provision, and administrative and humanitarian facilitation. This study concludes that strengthening legal education and public understanding of consular functions is a preventive measure to minimize immigration violations and erroneous expectations regarding the state's role in the deportation process.

Keywords: *Consular Protection, Deportation, Vienna Convention 1963, Indonesian Citizens*

INTRODUCTION

The deportation of foreign nationals is a common practice among receiving countries as part of the implementation of the principle of state sovereignty. Under international law, every sovereign state has full authority to regulate who can enter, reside, and conduct activities within its jurisdiction. This authority includes the right to expel or deport foreign nationals deemed to have violated national law, threatened public order, or failed to meet applicable immigration requirements. Deportation is thus understood as a legitimate administrative legal instrument and a direct manifestation of the supremacy of state sovereignty.(Mirwanto & Kartiko, 2020)This practice is common in globalization and increasing human mobility, including among Indonesian citizens (WNI) who work, study, or migrate abroad.On the other hand, although the receiving country has absolute authority to deport, the country of origin is not automatically free from responsibility for its citizens abroad. One form of this responsibility is the obligation to provide consular protection. Consular protection is part of the function of diplomatic and consular representatives, which aims to protect the interests of citizens in foreign countries, particularly when those citizens face legal or administrative problems or human rights violations. In deportation, consular protection is crucial because deported citizens are often in a vulnerable position, both legally, socially, and economically.

The 1963 Vienna Convention on Consular Relations (VCCR 1963) serves as the primary international legal basis governing the functions, rights, and obligations of consular representatives. Article 5 of the 1963 Vienna Convention explicitly states that consular functions include protecting the interests of the sending state and its nationals in the receiving state, in accordance with international law. Article 36 of the 1963 Vienna Convention guarantees the right to communication and consular access for nationals detained or subject to legal action by the receiving state. This provision emphasizes that consular protection is not merely a voluntary act, but a legal obligation recognized within the international legal regime.(Kadish, 1996). The implementation of consular protection for citizens subject to deportation often raises complex legal issues. On the one hand, the country of origin has a legal and moral obligation to protect its citizens abroad. However, on the other hand, the country of

origin must still respect the sovereignty and jurisdiction of the receiving country, which has full authority over the deportation process. This situation creates a normative tension between the principle of non-intervention and the obligation to protect citizens, where excessive consular protection measures could potentially be viewed as interference in the receiving country's internal affairs. In practice, consular protection for deported Indonesian citizens exhibits clear limitations. The role of the country of origin is generally limited to administrative assistance, providing legal information, facilitating communication, and repatriation. The country of origin does not have the authority to overturn or intervene in deportation decisions made by the receiving country's authorities. This emphasizes that consular protection cannot be equated with the judicial or administrative authority of the receiving country. The issue of the limits of a state's obligations regarding consular protection is also closely related to the protection of human rights. Deportation has the potential to result in human rights violations if carried out without fair procedures or humane treatment.

LITERATURE REVIEW

Consular relations is a field of international law that continues to evolve in response to increasing human mobility and the dynamics of global migration. This current article emphasizes the role of consular representation in international relations and how this function has expanded in modern practice. Johns (2025) In his analysis of consular internationalism, he discusses how consular work has become an aspect of contemporary international law, not just an ordinary administrative task, but also a space for legal interaction between states and protection for citizens abroad in various situations, including deportation and detention. This research highlights the dilemmas in consular practice and emphasizes the need for a stronger theoretical framework to understand the relationship between international law and consular protection practices in a complex global context.

According to Harisman & Lubis (2023) Legal certainty is a fundamental principle that ensures the consistent and predictable implementation of a treaty or legal agreement. This principle applies not only to the resolution of civil disputes but also serves as the foundation of international law governing relations between states. The 1963 Vienna Convention affirms that a state's obligation to provide consular protection to its citizens abroad must be implemented in accordance with international legal commitments and the principle of *pacta sunt servanda*, which binds the parties. Normatively, the 1963 Vienna Convention on Consular Relations (VCCR) is the primary legal foundation governing consular relations between states. This convention outlines the functions, rights, and obligations of consular officials, including the obligation to protect the interests of the sending state and its nationals in the receiving state. The VCCR provides the legal basis for consular protection and assistance to citizens experiencing legal or administrative difficulties abroad. Provisions such as Article 5 of the VCCR cover protection and administrative assistance for citizens abroad and provide a general framework for consular obligations. (Moraru, 2025).

Specific literature on deportation remains relatively limited. However, the concept of consular protection has been generally discussed, particularly in relation to the fundamental rights of individuals threatened by the administrative actions of a foreign state. Consular obligations under the VCCR do not include the right to delay or intervene in the receiving state's deportation decision, but rather the obligation to provide administrative assistance and protection so that citizens can still receive fair treatment and access to due process. This often gives rise to debate among international legal scholars regarding the extent to which consular protection should be viewed as a binding legal obligation versus a flexible diplomatic policy measure. (Johns, 2025). A theoretical debate also arises regarding how international law views the limits of consular obligations. Some emphasize that these obligations are procedural, such as access to communications and information, and nothing more. Others argue that in the realm of human rights protection and migration, consular functions should be more proactive in ensuring that processes such as deportation do not violate international human rights standards. This debate is relevant in the deportation of Indonesian citizens who face the risk of human rights violations such as excessive detention or unsafe repatriation. However, international empirical literature specifically linking consular protection to deportation is still limited and needs to be expanded. (Avilia, 2017).

RESEARCH METHODS

This research uses a normative legal research method, namely research that focuses on the study of legal norms applicable in the international legal system. Normative legal research was chosen because the object of this research study focuses on the analysis of legal provisions that regulate the state's obligations in providing consular protection to deported citizens, especially based on the Vienna Convention on Consular Relations of 1963. This approach is relevant to examine the extent to which international legal norms provide the basis, scope, and limits of

state obligations in consular protection. The approaches used in this research consist of a statutory approach and a conceptual approach. The statutory approach is carried out by examining relevant international legal instruments, particularly the 1963 Vienna Convention on Consular Relations, as the primary legal source governing the functions, rights, and obligations of consular representatives. This approach also includes a review of general principles of international law, such as state sovereignty, territorial jurisdiction, and the principle of non-intervention, which play a role in determining the limits of consular protection in the deportation process.

The legal materials used in this study consist of primary and secondary legal materials. Primary legal materials include the 1963 Vienna Convention on Consular Relations as the main international legal instrument, as well as decisions of the International Court of Justice relevant to consular protection and relations between states. The decisions of the International Court of Justice are used to strengthen normative analysis and provide legal interpretation of the provisions of the 1963 Vienna Convention in international legal practice. Secondary legal materials include international law textbooks, international law journals, previous research results, and scientific articles discussing the issues of consular protection, deportation, and the rights of citizens abroad. Secondary legal materials serve to provide explanations, critiques, and interpretations of primary legal materials, while also assisting researchers in understanding developments in academic thought and debates related to the research topic. The legal material collection technique was conducted through library research, namely by inventorying, reviewing, and examining legal materials relevant to the research problem. All collected legal materials were then analyzed qualitatively using prescriptive and descriptive-analytical analysis methods. Prescriptive analysis was conducted to formulate a normative view regarding the obligations and limits of consular protection, while descriptive-analytical analysis aims to explain and interpret applicable legal provisions and consular protection practices in deportation.

RESULTS AND DISCUSSION

Deportation in the Perspective of International Law

The research results show that deportation is an administrative legal instrument widely recognized in international law as part of the implementation of the principle of state sovereignty. Each country has full authority to determine immigration policies, including the right to expel or deport foreign nationals within its jurisdiction. This authority is based on the principles of sovereignty and territorial jurisdiction, which place the state as the highest authority in regulating the entry, stay, and expulsion of foreigners from its territory. In international practice, deportation is understood not as a criminal sanction, but rather as an administrative measure aimed at upholding the rule of law and the national interests of the receiving country. Modern international law emphasizes that deportation is not absolute and may not be carried out arbitrarily. International law does not prohibit deportation, but requires that such action be carried out with due process of law and humane treatment of the deported individual. A study conducted by Bliss (2000) demonstrates that the principle of procedural fairness in deportation has developed as an international minimum standard, encompassing the right to be informed of the reasons for deportation, the opportunity to appeal, and access to legal aid. This principle aims to prevent abuse of state authority in migration policy and ensure the protection of the fundamental rights of foreign citizens.

The research also shows that deportations must be implemented with due regard for the principle of humane treatment. This principle is rooted in international human rights law, which requires states to respect human dignity, including that of vulnerable foreign nationals. Deportations accompanied by arbitrary detention, the use of violence, or inhumane conditions of detention potentially violate a state's international obligations. According to research by Bossow (2024), deportation cannot be separated from the state's obligation to ensure that individuals do not experience treatment that degrades human dignity during the administrative process. From an international legal perspective, the limitations on deportation authority are also evident in their relationship to the principles of human rights protection, although deportation itself remains within the realm of state discretion. Receiving countries are still obliged to consider the individual circumstances of foreign nationals facing deportation, including humanitarian considerations, legal status, and fair procedures. However, international law does not oblige receiving countries to maintain the presence of foreign nationals in their territory if they are proven to have violated immigration laws or applicable domestic regulations. Deportation lies at the intersection of state sovereignty and the protection of individual rights. States have the right to deport, but this right is constrained by international legal norms that require respect for due process and humane treatment. Therefore, from an international legal perspective, deportation is not a prohibited act, but rather a conditional one. This study confirms that as long as deportation is carried out according to legal procedures, respects fundamental individual rights, and does not violate international humanitarian standards, it remains legal and justifiable under international law.

Consular Protection According to the Vienna Convention 1963

Consular protection is one of the fundamental obligations of a country of origin in international relations, aiming to protect the interests of its citizens outside its jurisdiction. This obligation is rooted in the legal relationship between a country and its citizens (nationality link), which remains in place even when those citizens are in another country's territory. Under international law, consular protection is not interpreted as an interference with the sovereignty of the host country, but rather as a recognized legal mechanism to ensure that citizens receive proper treatment in accordance with applicable law. The Vienna Convention on Consular Relations (VCCR 1963) is the primary international legal instrument governing the scope, function, and limitations of consular protection. Article 5 of the VCCR 1963 explicitly states that one of the functions of a consular post is to protect the interests of the sending state and its nationals in the receiving state, within the limits permitted by international law. This provision confirms that consular protection has a clear legal basis and is normative in nature, not merely an act of diplomatic policy or goodwill.

Article 36 of the 1963 VCCR provides guarantees regarding the right of consular access, particularly for citizens detained, arrested, or subject to legal action by the receiving state. This article regulates the right of citizens to communicate with their country's consular representatives, as well as the obligation of the receiving state to inform them of this right without delay. In international legal practice, Article 36 is often understood as a key pillar of consular protection because it guarantees access to information, communication, and consular assistance in vulnerable legal situations. (Denza, 2022). Consular protection under the 1963 Vienna Convention has strict limitations. This Convention does not authorize the country of origin to intervene in the legal processes or administrative policies of the receiving country. The principle of non-intervention and respect for state sovereignty remain the primary foundations in the implementation of consular functions. Therefore, the role of consular representatives is limited to providing administrative assistance, monitoring the treatment of citizens, and facilitating limited communication and assistance, without interfering in the legal or administrative decisions of the receiving country. This limitation is also emphasized in international practice and jurisprudence. In various studies of international law, consular protection is understood as a procedural obligation, not a substantive obligation to change or overturn the receiving state's decisions, including deportation. According to Melissen (2020), the consular function is assistive rather than interventionist, meaning it aims to help citizens navigate the foreign legal system, not replace or challenge the authority of the receiving state. This view asserts that the country of origin cannot demand a halt to deportation, but can only ensure that the process is carried out in accordance with the law and standards of humane treatment.

The Role of Consular Protection in the Deportation Process

The research findings indicate that consular protection plays a role in every stage of the deportation of citizens abroad, although this role has clear limitations under international law. Deportation, as an administrative action by the receiving country, remains within the sovereignty of that country. However, the presence of consular representatives from the country of origin serves as a procedural and humanitarian protection mechanism for citizens subject to deportation. This role is not intended to hinder or cancel deportation, but rather to ensure that the deportation process is carried out in accordance with applicable legal provisions and the principles of humane treatment. In the initial stages of deportation, namely during detention or restriction of liberty by the immigration authorities of the receiving country, the role of consular protection becomes crucial. Consular access at this stage is guaranteed by Article 36 of the 1963 Vienna Convention on Consular Relations, which grants citizens the right to communicate with their consular representatives and obliges the receiving country to facilitate such access. Research shows that consular access at the detention stage serves to ensure appropriate detention conditions, provide initial information regarding the citizen's legal rights, and monitor the treatment received by the person concerned. According to Avilia (2017), consular involvement in the early stages of detention contributes significantly to preventing violations of procedural rights and strengthening the principle of due process of law in immigration practice. The next stage is the administrative deportation process, where the consular role focuses on providing information and limited assistance. At this stage, consular representatives explain the deportation procedures, assist with communication between citizens and local authorities, and facilitate access to legal assistance if necessary. However, research confirms that consular assistance does not include the authority to interfere with or influence substantive deportation decisions made by the receiving state. This aligns with the principle of non-intervention in international law, which limits the consular role to merely normative assistance and oversight. Martin (2005) states that the consular function in deportation is a procedural safeguard, not a legal instrument to challenge the migration policies of the receiving country.

In the final stage of deportation, namely repatriation to the country of origin, consular protection takes on a more prominent administrative and humanitarian dimension. The consular role at this stage includes facilitating travel documents, coordinating with local immigration authorities, and providing humanitarian assistance to vulnerable citizens, such as those lacking documents, funds, or social support. Research shows that the repatriation stage is often the most crucial moment for citizens, so consular presence plays a role in ensuring the safe and dignified repatriation process.

Case Examples and State Practices in Consular Protection

The practice of consular protection in international law is not only shaped by the normative provisions of the 1963 Vienna Convention on Consular Relations, but is also reinforced through international jurisprudence and state practice. Two decisions of the International Court of Justice (ICJ), namely the *LaGrand* case (Germany v. United States) and *Avena* and Other Mexican Nationals (Mexico v. United States), serve as primary references in understanding the status of consular access as an international legal obligation binding on receiving states. These cases provide precedent regarding the meaning of Article 36 of the 1963 Vienna Convention and its implications for the protection of foreign nationals facing legal proceedings in other countries. In the *LaGrand* case (2001), Germany sued the United States for failing to notify two German citizens who had been arrested and sentenced to death of their right of consular access. The International Court of Justice affirmed that Article 36 of the 1963 Vienna Convention creates an international legal obligation for the receiving state, not simply an internal administrative norm. This ruling affirmed that the right of consular access is both an individual right of foreign nationals and an obligation of the receiving state to facilitate communication with the consular representative of the country of origin. The *LaGrand* decision was a landmark decision because it reinforced the status of consular protection as part of an international legal obligation that can give rise to state liability if violated. (Kristanti, 2019).

This ruling was further reinforced in the *Avena* case (2004), in which the International Court of Justice declared that the United States had violated Article 36 of the 1963 Vienna Convention against dozens of Mexican citizens. In this case, the ICJ affirmed the obligation of receiving states to review and reconsider domestic decisions rendered without the right of consular access. Although the *Avena* case does not directly concern deportation, its relevance to consular protection is significant because it confirms that consular access is a fundamental element in ensuring procedural justice for foreign nationals facing legal action by receiving states. State practice also demonstrates how consular protection is actually applied in deportation. Countries such as Canada, Germany, and the Philippines are known for having relatively proactive consular protection policies, particularly for citizens facing immigration and deportation proceedings abroad. However, these practices demonstrate that consular protection remains focused on administrative and humanitarian assistance, without the intention of overturning or challenging the deportation decision of the receiving country. This practice aligns with the principle of non-interference and respect for the sovereignty of other states.

Canada, for example, through its Consular Services Charter, emphasizes that consular assistance be provided in the form of information, communication with families, and facilitation of repatriation, but explicitly states that the Canadian government cannot interfere in the legal processes or immigration decisions of foreign countries. A similar approach is adopted by Germany, which emphasizes the consular role on monitoring the treatment of its citizens and administrative assistance during deportation proceedings. The Philippines, as a country with a large migrant worker population, also prioritizes humanitarian aspects through limited legal assistance, assistance during immigration detention, and facilitation of repatriation, without claiming the authority to overturn deportations that have been legally decided by the receiving country. (Leonardo, 2024). Both through International Court of Justice rulings and state practice, consular protection is understood as a legal but limited obligation. The *LaGrand* and *Avena* cases affirm consular access as a binding international obligation, while state practice demonstrates that consular protection functions as a mechanism for humanitarian assistance and protection, not as an instrument to negate the deportation authority of the receiving state.

Challenges of Indonesian Consular Protection

The research findings indicate that Indonesia's consular protection during deportation faces a number of structural and social challenges that impact its effectiveness. Although Indonesia is normatively bound by the 1963 Vienna Convention on Consular Relations, the public often perceives its implementation as suboptimal. The main challenges identified include the reactive nature of consular protection, public misunderstanding of consular functions, and incompletely integrated inter-agency coordination.

One of the findings of this study is that Indonesian consular protection is generally reactive, meaning it only becomes more intensive when a citizen is facing serious legal problems, including when a deportation decision is final. In many cases, deportation cannot be intervened by consular representatives because it has already entered the full sovereign territory of the receiving country. International law strictly limits the role of the country of origin to interfering in the immigration policies of the receiving country, especially when violations have been proven and administrative procedures have been carried out in accordance with local law. Consequently, Indonesian consular authorities are limited to providing assistance and facilitating repatriation. The next challenge is the public's misperception of the consular protection function. Many people assume that Indonesian missions abroad have the authority to "handle" or cancel deportations, regardless of the violations committed. This perception is exacerbated by a low level of public understanding of immigration law. This lack of understanding leads Indonesian citizens, both intentionally and unintentionally, to commit immigration violations such as overstaying their residence permits, misusing visas, working without valid work permits, and other administrative violations. Only when deportations are imposed is consular assistance requested, and consular representatives are often blamed for their inability to reverse the decision.

This is clearly evident in a real-life case of overstaying in Malaysia. An Indonesian citizen was found to have overstayed his valid stay permit, assuming the violation could be "taken care of" by the Indonesian Embassy. In reality, Malaysian immigration authorities proceeded with deportation procedures in accordance with national law. In this case, the Indonesian consular role was limited to assistance during the administrative process and facilitating repatriation, without the authority to halt the deportation. This case demonstrates the gap between public expectations and the legal limits of consular protection. (Hallett, 2006). Another example is a case of visa abuse, where an Indonesian citizen enters the destination country on a tourist visa but then works illegally. After being apprehended by immigration authorities, the person in question is subject to deportation. The violation is substantive and clearly violates the immigration laws of the receiving country, leaving no legal room for consular representatives to intervene. As emphasized by Schmid (2021), the country of origin does not have the authority to oppose or cancel a lawful deportation action, as long as due process and humane treatment procedures have been met.

Efforts to Improve Consular Protection in Deportation Cases

Efforts to improve Indonesian consular protection during deportations need to be directed at strengthening institutional mechanisms, enhancing coordination, and providing a preventative approach through legal education for Indonesian citizens abroad. These steps are to ensure effective consular protection without overstepping boundaries. First, strengthening the early notification mechanism is crucial for increasing the effectiveness of consular protection. Early notification allows consular representatives to obtain information early on when an Indonesian citizen is detained or confronted by the immigration authorities of the receiving country. With rapid access to information, consular representatives can immediately carry out their assistance functions, ensure that the basic rights of Indonesian citizens are fulfilled, and monitor the legal process. This mechanism aligns with Article 36 of the 1963 Vienna Convention, which guarantees the right of the country of origin to be notified if its citizens are detained, without interfering with the substantive legal process within the jurisdiction of the receiving country.

Second, standardizing consular assistance is a step to ensure uniformity in the quality of protection services for Indonesian citizens in various countries. This standardization includes procedures for assistance during detention, providing basic legal information, assisting with communication with families, and providing administrative assistance during repatriation. With clear standards, consular protection is not dependent on the individual interpretation of representative officials but rather operates based on transparent and accountable institutional guidelines. This standardization also helps manage the expectations of Indonesian citizens, ensuring they understand that consular assistance does not equate to cancellation of deportation. This preventive approach does not contradict the 1963 Vienna Convention. Rather, Article 5 of the Vienna Convention emphasizes that consular functions include protecting the interests of citizens and providing assistance and advice. Thus, consular functions are not merely reactive following violations, but can also be preventive through fostering and disseminating legal information. Increasing legal understanding is expected to reduce the number of immigration violations and alleviate the public's misconception that consular offices have the authority to cancel deportations.

CLOSING

Based on the research and discussion, it can be concluded that consular protection and deportation are two distinct yet interrelated legal mechanisms in the practice of international relations. Deportation is an administrative action that falls entirely within the authority of the receiving country, embodying the principle of state sovereignty in enforcing immigration law. International law, including the 1963 Vienna Convention on Consular Relations, does not prohibit deportation as long as it is implemented with due process of law and humane treatment of foreign nationals. On the other hand, countries of origin have an obligation to provide consular protection to their citizens facing deportation proceedings abroad. This obligation includes providing consular access, assistance, information dissemination, and administrative and humanitarian assistance within the limits defined by international law. Consular protection is not intended to intervene in or overturn deportation decisions, but rather to ensure that citizens' basic rights are respected throughout the process. The limits of the country of origin's obligations regarding consular protection must be understood proportionally. The receiving country retains full authority to enforce immigration laws, while the country of origin plays a role in providing assistance and humanitarian protection. A proper understanding of this relationship can avoid erroneous public expectations and strengthen the effectiveness of consular protection within the framework of applicable international law.

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