

Insight

Death of Juliana Marins – Legal Action on the Horizon against Indonesia: A Study on State Responsibility and Foreign Nationals' Rights

Frenchelse Gorga Siahaan, S.H., M.H.



ADP Counsellors at Law

Plaza Simatupang 6th Floor Kav. IS No. 01, Jl. T.B. Simatupang, RT.2/RW.17, Pd. Pinang, Kec. Kby. Lama, Kota Jakarta Selatan, Daerah Khusus Ibukota Jakarta 12310 | info@adplaws.com

Introduction

In June 2025, Indonesia faced international attention following the death of Juliana Marins, a Brazilian tourist who fell during a hike on Mount Rinjani, West Nusa Tenggara. The incident triggered protest from the public, especially from Brazilian citizens, who blamed the Indonesian Search and Rescue (SAR) team for being slow and negligent in the rescue operation.

Several media reported that the Brazilian Government is considering taking formal legal action against Indonesia, based on possible human rights violations due to the alleged failure of the SAR team to provide in time and with the right help.

In International Law, nationality is not just an administrative status, but the main basis for a state to claim, be responsible for, and carry out diplomatic protection functions for its citizens who are in other countries.

According to J.G. Starke, the importance of a person's nationality status under international law are:

1. Granting the right to diplomatic protection abroad. Every country has the right to protect its citizens abroad;
2. The state that becomes the nationality of a particular person will be responsible to other countries if the state neglects its obligation to prevent unlawful acts committed by the person concerned or the state does not punish it, after the unlawful act is committed.
3. In general, a state may not refuse or readmit its own nationals to its territory.
4. Nationality is closely related to loyalty, and one of the main rights of loyalty is the obligation to serve in the military service of the country to which the loyalty is devoted.
5. A state has a broad right, unless a special treaty binds it to exercise that right, to refuse the extradition of its nationals to another state which requests their surrender.
6. The status of an enemy in war may be determined by the nationality of the person.
7. A state exercises criminal and other jurisdiction on the basis of a person's nationality.

This protection function is carried out by diplomatic and consular representatives who are tasked with protecting the rights and interests of their citizens, especially in emergency situations or when there are allegations of human rights violations by the host country. In this context, the Brazilian Government's move to consider legal action against Indonesia over the death of Juliana Marins shows how the diplomatic protection mechanism can be used to question the responsibility of another state when it allegedly fails to protect foreigners in its jurisdiction.

If yes, discuss whether the violation/negligence constitutes an International Crime which can be disputed by the Brazilian Government.

ADP Counsellors at Law

Plaza Simatupang 6th Floor Kav. IS No. 01, Jl. T.B. Simatupang, RT.2/RW.17, Pd. Pinang, Kec. Kby. Lama, Kota Jakarta Selatan, Daerah Khusus Ibukota Jakarta 12310 | info@adplaws.com

Recognizing the Rights of Foreigners in International Law

The obligations of a state towards foreigners within its jurisdiction are not only based on national law, but also on international law, especially ratified international treaties. Indonesia has become a party to the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005, which means that Indonesia is legally bound to implement the obligations contained in the Covenant.

Article 6 of the ICCPR states:

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

This provision is universal and does not distinguish between citizens and foreigners. This means that Indonesia is obliged to protect the right to life of everyone within its jurisdiction, including foreign nationals like Juliana Marins.

Has Indonesia Ratified the ICCPR and What Does It Entail Domestically?

Yes, Indonesia ratified the ICCPR through Law No. 12 of 2005. As a consequence, its provisions form part of the domestic legal framework. However, under the principle of legality (*nullum delictum sine praevia lege poenali*), a person or institution including the SAR team can only be held legally responsible if a specific national law stipulates the offense.

This means any claim of wrongdoing must be grounded not only on international law but also on positive Indonesian laws or regulations, such as criminal provisions under the KUHP or administrative obligations under relevant disaster response regulations

Did the SAR Team Violate Any National Regulations?

To figure out if the SAR team was legally negligent, we need to check out Law No. 29 of 2014 on Search and Rescue. The state is responsible for organizing search and rescue. This means that when there's an emergency like what happened to Juliana Marins, the state has to step in.

Furthermore, SAR operations are conducted in situations involving accidents, disasters, or conditions that endanger human life. This case falls under the conditions 'that endanger human life' category, so legally, the state does indeed have responsibility for the incident.

Additionally, the rescue process must be conducted using clear procedures, adequate equipment, and competent human resources. As long as the SAR team has followed the applicable procedures, they cannot be immediately deemed to have violated the law.

ADP Counsellors at Law

Plaza Simatupang 6th Floor Kav. IS No. 01, Jl. T.B. Simatupang, RT.2/RW.17, Pd. Pinang, Kec. Kby. Lama, Kota Jakarta Selatan, Daerah Khusus Ibukota Jakarta 12310 | info@adplaws.com

However, it is important to understand that SAR operations cannot be carried out carelessly or spontaneously. Every SAR operation must be based on an effective and efficient plan, which includes, among other things: identification of the location of the situation, estimation of the position of the victims, calculation of the movement of the victims, and technical planning for evacuation and deployment of personnel and equipment. Therefore, SAR actions cannot be carried out instantly without careful consideration, as they could risk worsening the situation or even increasing the number of casualties.

So far, there is no evidence to suggest that the SAR team violated SOPs or national laws. Even from a Criminal Provisions of this regulation, focus more on sabotage or false reports not operational negligence.

Therefore, nationally, there is no indication that the SAR team violated the law, either administratively or criminally, in this case.

The Role of Exhaustion of Local Remedies in International Claims and Limitations on State Responsibility

To establish state responsibility in the context of alleged violations against foreign nationals, reference must be made to the principle of exhaustion of local remedies in international law, which states that foreign nationals or the families of victims must first exhaust all available and effective legal remedies or dispute resolution mechanisms at the domestic level (e.g., reporting to the police, filing a complaint with the National Commission on Human Rights, filing a civil lawsuit, or appealing an administrative decision).

Only if these local legal remedies are unavailable, ineffective, or result in a denial of justice, may the home country (in this case, the Brazilian government) pursue diplomatic claims or bring the case to an international forum. This principle is an international customary law norm that serves as a procedural prerequisite in the process of enforcing state responsibility in the realm of international law.

Furthermore, in cases such as the death of a tourist like Juliana Marins, unless there is systemic misconduct or gross negligence by the state, such incidents generally do not qualify as international crimes or fall within the jurisdiction of the International Court of Justice (ICJ), unless there is a treaty or arbitration clause governing the matter. Thus, legal efforts and resolution through internal state channels must be prioritized before bringing the case to the international arena, in accordance with the principle of exhaustion of local remedies.

Clarifying the Role of “State”, National vs. Subnational Responsibility

In international law, “state” refers to the sovereign nation, not to its provinces or regional governments. Thus, even if the alleged failure occurred at a provincial level (e.g., West Nusa Tenggara’s regional SAR coordination), Indonesia as a whole is the entity held responsible under international law.

ADP Counsellors at Law

Plaza Simatupang 6th Floor Kav. IS No. 01, Jl. T.B. Simatupang, RT.2/RW.17, Pd. Pinang, Kec. Kby. Lama, Kota Jakarta Selatan, Daerah Khusus Ibukota Jakarta 12310 | info@adplaws.com

Subnational authorities may have committed the operational act, but the central government bears international legal responsibility for all organs acting in an official capacity per Article 4 of the DASR.

Conclusion

While the tragic death of Juliana Marins has rightly attracted attention and public concern, it does not automatically constitute a breach of Indonesia's international obligations, legally, diplomatically, or criminally. Unless it can be proven that Indonesia violated its internal regulations on SAR response, there was gross or systematic negligence amounting to arbitrary deprivation of life, and all effective local remedies were exhausted, then Indonesia cannot be held internationally liable.

Although the death of Juliana Marins on Mount Rinjani has generated strong criticism from the Brazilian public, including the discourse of a potential international lawsuit against Indonesia, legally this case has not yet qualified as an international dispute between states. Legal claims made by organizations such as the Brazilian Federal Public Defender's Office (DPU) do not necessarily create legal obligations for Indonesia, given that the DPU does not have the capacity in interstate legal forums. There is also no bilateral treaty between Indonesia and Brazil or binding dispute resolution mechanism that allows Brazil to escalate this issue into an international judicial dispute.

Instead, the Brazilian Government's concerns are better channeled through diplomatic discussions and bilateral cooperation, including calls for transparent investigations and improvements to SAR protocols.

This case serves as a critical reflection point for Indonesia to strengthen its emergency response mechanisms, ensure clarity in legal obligations and accountability procedures, and maintain its international standing by acting in good faith and with public transparency.

This article is intended for general informational purposes only and does not constitute legal advice. For legal assistance or inquiries specific to your situation, please contact us at info@adplaws.com.

ADP Counsellors at Law

Office

Plaza Simatupang 6th Floor Kav. IS No. 01, Jl. T.B. Simatupang, RT.2/RW.17, Pd. Pinang, Kec. Kby. Lama, Kota Jakarta Selatan, Daerah Khusus Ibukota Jakarta 12310

Email

info@adplaws.com

Tel.

+6221 2270 2291



**THE BEST LEGAL SERVICE
TO NAVIGATE YOUR BUSINESS**

