

**ANALISIS YURIDIS KEKEBALAN ORGANISASI INTERNASIONAL
(Studi tentang Kasus Waite dan Kennedy dengan European Space Agency
di Mahkamah Hak Asasi Manusia Eropa pada 1999)**

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ABSTRAK

Masalah penerapan kekebalan organisasi internasional dari yurisdiksi negara pernah terjadi antara European Space Agency dengan dua stafnya, yaitu Waite dan Kennedy. Dalam kasus ini, European Space Agency mengandalkan kekebalannya dari yurisdiksi Jerman, sedangkan Waite dan Kennedy menggunakan hak individunya atas akses keadilan. Waite dan Kennedy mengajukan permohonan ke Komisi HAM Eropa yang kemudian diserahkan ke Mahkamah HAM Eropa terkait adanya pelanggaran Pasal 6 ayat (1) European Convention on Human Rights oleh European Space Agency.

Tujuan penelitian yaitu untuk memahami pengaturan kekebalan organisasi internasional dalam hukum internasional dan menganalisis kekebalan organisasi internasional dalam kasus Waite dan Kennedy dengan European Space Agency. Tipe penelitian yaitu yuridis normatif dengan metode pendekatan yang digunakan adalah pendekatan perundang-undangan dan pendekatan kasus. Spesifikasi penelitian yaitu deskriptif analitis. Metode pengumpulan data yaitu studi kepustakaan dengan menggunakan data sekunder yang disajikan dalam bentuk uraian sistematis yang kemudian dianalisis secara normatif kualitatif.

Berdasarkan hasil penelitian, pengaturan terkait kekebalan organisasi internasional tercantum dalam Pasal 104 dan 105 Piagam PBB, Pasal 26 sampai dengan Pasal 35 Konvensi Wina 1975, Bagian 2 dan Bagian 3 Convention on the Privileges and Immunities of the United Nations 1946, Pasal 3 Bagian 5 Convention on the Privileges and Immunities of Specialized Agencies 1947, instrumen pendirian organisasi, dan perjanjian markas besar. Penerapan kekebalan organisasi internasional dalam kasus Waite dan Kennedy dengan European Space Agency menimbulkan pelanggaran hak individu atas akses keadilan, sebab berdasarkan uji hak-hak fundamental oleh Mahkamah HAM Eropa, Waite dan Kennedy tidak memiliki alternatif penyelesaian sengketa di pengadilan nasional Jerman, tetapi kekebalan European Space Agency tidak dicabut.

Kata Kunci: kekebalan, hak individu, keadilan, Mahkamah HAM Eropa

LEGAL ANALYSIS OF INTERNATIONAL ORGANIZATION IMMUNITIES

(Case Study of Waite and Kennedy v. European Space Agency at the European Court of Human Rights in 1999)

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ABSTRACT

The issue of applying an international organization's immunity from state jurisdiction has occurred between the European Space Agency and two of its staff, Waite and Kennedy. In this case, the European Space Agency relied on its immunity from German jurisdiction, while Waite and Kennedy invoked their individual rights to access to justice. Waite and Kennedy filed an application with the European Commission on Human Rights which was then submitted to the European Court of Human Rights regarding a violation of Article 6 paragraph (1) of the European Convention on Human Rights by the European Space Agency.

The purpose of the research are to understand the immunity arrangements of international organizations in international law and to analyze the immunity of international organizations in the Waite and Kennedy case v. European Space Agency. The type of research is normative juridical with the approach method used is the statutory approach and case approach. The research specification is descriptive analytical. The data collection method is a literature study using secondary data presented in the form of a systematic description which is then analyzed normatively qualitatively.

Based on the results of the research, arrangements related to the immunity of international organizations are contained in Articles 104 and 105 of the UN Charter, Articles 26 to 35 of the 1975 Vienna Convention, Part 2 and Part 3 of the Convention on the Privileges and Immunities of the United Nations 1946, Article 3 Part 5 of the Convention on the Privileges and Immunities of Specialized Agencies 1947, the organization's founding instrument, and the headquarters agreement. The application of international organizational immunity in Waite and Kennedy's case with the European Space Agency led to a violation of the individual's right to access to justice, because based on the fundamental rights test by the European Court of Human Rights, Waite and Kennedy had no alternative dispute resolution in the German national courts, but the European Space Agency's immunity was not lifted.

Keywords: *immunities, individual rights, justice, European Court of Human Rights*