

**ANALISIS YURIDIS KEKEBALAN PEJABAT NEGARA TERHADAP
PENERAPAN YURISDIKSI UNIVERSAL MENURUT
HUKUM INTERNASIONAL**
(Studi tentang Arrest Warrant of 11 April 2000 untuk Abdoulaye Yerodia Ndombasi
di Mahkamah Internasional antara Kongo v. Belgia)

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ABSTRAK

Hukum internasional memberikan kekebalan kepada pejabat negara guna menjamin kelancaran hubungan internasional suatu negara. Yurisdiksi universal di sisi lain, lahir untuk menghukum pelaku kejahatan internasional. Permasalahan terjadi ketika aturan terkait kekebalan pejabat negara dihadapkan dengan penerapan yurisdiksi universal, seperti yang terjadi dalam kasus Arrest Warrant of 11 April 2000 antara Kongo dan Belgia di Mahkamah Internasional. Pengadilan Tribunal Brussels di Belgia mengeluarkan surat perintah penangkapan *in absentia* kepada Abdoulaye Yerodia Ndombasi selaku Menteri Luar Negeri Kongo dengan tuduhan sebagai pelaku kejahatan perang dan kejahatan terhadap kemanusiaan. Kongo kemudian mengajukan gugatan terhadap Belgia ke Mahkamah Internasional pada 17 Oktober 2000.

Tujuan penelitian ini yaitu untuk mengetahui serta menganalisis pengaturan mengenai kekebalan pejabat negara dan kedudukannya terhadap penerapan yurisdiksi universal dalam kasus Arrest Warrant of 11 April 2000 berdasarkan hukum internasional. Tipe penelitian yang digunakan adalah yuridis normatif dengan metode pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Spesifikasi penelitian yang digunakan adalah deskriptif analitis menggunakan sumber data sekunder. Pengumpulan data dilakukan dengan studi kepustakaan yang disajikan dalam bentuk uraian sistematis dan dianalisis secara normatif kualitatif.

Berdasarkan hasil penelitian, pengaturan terkait kekebalan pejabat negara secara universal diatur dalam Konvensi PBB 1969 tentang Misi Khusus dan Konvensi Wina 1975 tentang Perwakilan Negara-negara dalam hubungannya dengan Organisasi Internasional Bersifat Universal. Kekebalan pejabat negara juga diatur secara regional, salah satunya oleh ASEAN dalam Piagam ASEAN dan Perjanjian 2009 tentang Keistimewaan dan Kekebalan ASEAN. Mahkamah Internasional memutuskan bahwa dengan mengeluarkan surat perintah penangkapan, Belgia telah gagal untuk menghormati kekebalan Menteri Luar Negeri Kongo menurut hukum internasional. Mahkamah menyatakan bahwa penerapan yurisdiksi universal tanpa adanya hubungan tertentu antara pelaku dan negara yang mengadili tidak dapat diterapkan, terutama terhadap pejabat negara yang memiliki kekebalan.

Kata Kunci: kekebalan; pejabat negara; kejahatan internasional; yurisdiksi universal.

**LEGAL ANALYSIS OF THE IMMUNITY OF STATE OFFICIALS FROM
THE APPLICATION OF UNIVERSAL JURISDICTION UNDER
INTERNATIONAL LAW**

*(Study on the Arrest Warrant of 11 April 2000 for Abdoulaye Yerodia Ndombasi
at the International Court of Justice between Congo v. Belgium)*

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ABSTRACT

International law grants immunity to state officials in order to ensure the smooth running of a country's international relations. Universal jurisdiction, on the other hand, was created to punish perpetrators of international crimes. The problem arises when rules relating to the immunity of state officials are confronted with the application of universal jurisdiction, as in the case of the Arrest Warrant of 11 April 2000 between Congo and Belgium at the International Court of Justice. The Brussels Tribunal in Belgium issued an in absentia arrest warrant for Abdoulaye Yerodia Ndombasi as the Congolese Minister of Foreign Affairs on charges of war crimes and crimes against humanity. Congo then filed a lawsuit against Belgium at the International Court of Justice on 17 October 2000.

The purposes of the study were to examine and analyze the regulations regarding the immunity of state officials and its position on the application of universal jurisdiction in the case of the Arrest Warrant of 11 April 2000 based on international law. The type of research used was normative juridical with legislative approach, case approach, and conceptual approach method. The research specification used was descriptive analytical using secondary data sources. Data collection was carried out through a literature study presented in the form of a systematic description and analyzed normative-qualitatively.

Based on the results of the study, provisions regarding the immunity of state officials were universally regulated in the 1969 UN Convention on Special Missions and the 1975 Vienna Convention on the Representation of States in their Relations with International Organisations of a Universal Character. The immunity of state officials was also regulated regionally, one of which was by ASEAN in the ASEAN Charter and the 2009 Agreement on the Privileges and Immunities of ASEAN. The International Court of Justice ruled that by issuing an arrest warrant, Belgium had failed to respect the immunity of the Congolese Foreign Minister under international law. The Court stated that the application of universal jurisdiction without a specific connection between the perpetrator and the adjudicating state cannot be applied, especially against state officials who have immunity.

Keywords: *immunity; state officials; international crime; universal jurisdiction.*