

## Abstract

In the past, international laws granted Head of State and Government privileges and immunity under jurisdiction of court for both criminal and civil cases to enhance their effective roles as a representative of State. That is to say Head of State and Government shall not be liable to any prosecution in foreign states caused by their acts for state or personal affairs. In other words, throughout their posts, Head of State and Government shall be entitled to absolute immunity regardless of their acts. This norm had long been adopted in many countries until it finally became customary international law. Likewise, diplomatic representatives shall be entitled to the same immunity as evidenced in the Vienna Convention on Diplomatic Relations 1961, in which privileges and diplomatic immunity regarding prohibition of human rights violation are stated. However, Head of State or diplomatic representatives' acts for personal affairs were later deemed undeserved for immunity. Thus, immunity for Head of State or diplomatic representatives who perform their acts for personal affairs has from then been limited. Then, the problem concerning state official's immunity granted by international laws occurred. The question is whether state officials like Minister of Foreign Affairs should be granted absolute immunity like Head of State or Government since states have no written or practical evidence saying Minister of Foreign Affairs shall be entitled to absolute immunity for their acts committed during their posts. In addition, the issue concerning limitation of immunity for Head of State or Government committing international crimes was raised. Meanwhile, other states can conduct prosecution against state's high ranking officials such as Minister of Foreign Affairs who commits international crime under universal jurisdiction. The problem is whether high ranking officials such as Minister of Foreign Affairs can claim immunity under other states' universal jurisdictions in case of international crimes since practical written international law or customary international law has not yet been found. Therefore, court verdicts need to be studied as guidelines. A good example for the discussion is the verdict of Arrest Warrant Case in 2002 which bears the same facts as the aforementioned case and is very controversial.

According to the Arrest Warrant Case, International Court of Justice (ICJ) decided that Belgium's issuance of an arrest warrant against Mr. Abdulayeh Yerodia Ndombasi was regarded as human rights violation. In other words, it was against international laws. Consequently, ICJ requested that Belgium withdraw the arrest warrant against Mr. Abdulayeh Yerodia Ndombasi. Therefore, it can be inferred from this case that Minister of Foreign Affairs could receive full immunity or absolute immunity under jurisdictions of other states even in the case of severe international crimes. The court justified that there was no customary international law mentioning an exception of immunity for Minister of Foreign Affairs under jurisdictions of other states. Nonetheless, whether Minister of Foreign Affairs

can claim immunity in case of international crimes was not mentioned by the court despite the fact that it should have been mentioned to be a guideline for other countries dealing with similar cases. Besides some judges involved in this case, many international lawyers also disagreed with the court verdict.

The study of International Criminal Court (ICC) procedure shows the difference between ICJ and ICC in that ICJ has no specific legal provision for international crime procedure while ICC has. If Arrest Warrant Case had been conducted at ICC, the verdict might have reversed. As most of the countries in the world realized more about public losses caused by international crimes, immunity for high ranking officials committing international crimes will be limited.

In this thesis, problem analysis is conducted by bringing up opinions of Arrest Warrant Case judges and some international eminence of the professor in order to show rationales behind this case's verdict in a legal sense. It is aimed at explaining principles and rules for implementing international laws regarding immunity and international humanitarian law. Another purpose is to show the contradiction between these two laws which have not yet formally been written, leading to the implementation of customary international law and different interpretations of other laws by many groups of people. The crucial point is we should focus on public interest rather than personal interest or just one group of people.

The study of various points indicates that immunity for high ranking officials should be limited, especially when compared to international humanitarian law aimed at creating world peace. Furthermore, this thesis reveals the contradiction between the two kinds of international laws, causing difficulties in measuring their importance (Although courts use this case's verdict as a guideline for following cases). However, new facts could be found in the future, which might totally reverse the verdict.