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ICC Jurisdiction Analysis of the Legalization of the Russian President's Arrest Warrant in View of International Law

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Abstract: This research aims to analyze the ICC Jurisdiction and the Legalization of the Arrest Warrant for the President of Russia Based on the Principles of International Law of the 1998 Rome Statute and the Russian Party's Rejection of the ICC's Arrest Warrant, so this research was conducted to find out this. The method used in this research is a juridical normative type research method where this journal examines concepts, rules, principles, theories and statutory regulations as well as the opinions of existing legal experts which relate to the form of ICC jurisdiction based on the Statute. Rome 1998 from the perspective of International Law. As well as using a Conceptual Approach where material is obtained from literature such as books, journals, articles and so on which discuss this research problem. ICC (International Criminal Court) is an International Criminal Court established through the 1998 Rome Statute in The Hague, Netherlands. In its jurisdiction, the ICC can only try countries that recognize its jurisdiction which, based on the 1998 Rome Statute, outside of its jurisdiction, the ICC does not have the right to try (Dhuara, 2021). With this in mind, the issues raised in this research are as follows: 1. How to legalize the arrest warrant for Russian President Vladimir Putin, who is not a member country of the ICC or a country that has ratified the Rome Statute; 2. What is the basis for the Russian President's rejection of the Arrest Warrant based on International Law.

Keyword: ICC, Jurisdiction, 1998 Rome Statute, Arrest Warrant.

INTRODUCTION

Ukraine and Russia are countries that have the same ethnicity. Russia and Ukraine have a very long history from the beginning of their countries, both countries were formed as a result of the collapse of the Soviet Union. In 1991, after the cold war was won by the Western bloc and the destruction of the Warsaw Pact, the Soviet Union also collapsed. During the Soviet Union in 1991, the collapse of the Soviet Union was caused by the Soviet Administrative Command Program. The collapse of the Soviet Union in 1991 gave birth to several new countries, Ukraine and Russia were countries that were founded as a result of the collapse of the Soviet Union. Apart from Ukraine and Russia, other Commonwealth countries that were previously part of the Soviet Union also held an Independence Referendum. Under

the leadership of the President of Russia at that time, Kiev (Leader of Ukraine) and other Commonwealth countries also fought against the President of the Soviet Union at that time. However, in reality the Commonwealth of Independent States was not what the Russian government had hoped for, instead being the successor to the Soviet Union which was replaced by Russia. The Commonwealth of Independent States actually and formally declared its own independence. Unlike Russia, Ukraine, which maintains good relations with Russia, hopes to establish relations on the basis of equality, namely that both countries are sovereign over their respective independence.

Apart from being historically and geographically close, Ukraine also has close relations with Russia. Since the two countries were founded, many agreements have been made by both countries, including the friendship agreement or what is called The Treaty on Friendship, Cooperation and Partnership Between Russia and Ukraine which was signed in 1997, and the Nuclear Non-Proliferation Agreement. Treaty (NPT)(Susetio et al., 2022). The Nuclear Non-Proliferation Treaty (NPT) is an agreement signed on July 1 1968 with 191 countries as members of this NPT. The aim of this agreement is for there to be no new nuclear countries apart from the five major countries namely the United States, Russia, China, France and England which had developed nuclear weapons before the NPT came into effect. Ukraine only agreed to the NPT in 1994 because it only became independent in 1991. However, previously Ukraine, which was a state of the Soviet Union, felt capable of developing its weapons and was recognized as a sovereign state, but Russia wanted to limit sovereignty over the Ukrainian state. Meanwhile, the meaning of a sovereign country is to comply with international law, not harm or violate the sovereignty of other countries(Maryani, et al., 2018)

The Treaty on Friendship, Cooperation and Partnership Between Russia and Ukraine Federation or the Treaty of Friendship, Cooperation and Partnership between the Russian Federation and Ukraine is an agreement that marks the creation of relations between the two countries. The agreement was signed on May 31, 1997 by Boris Yeltsin of Russia and Leonid Kuchma, President of Ukraine at that time. Diplomatic relations between the two countries were marked by the signing of this Agreement, this agreement is not only a friendship agreement between Russia and Ukraine, but also the agreement is a bilateral agreement established to carry out cooperation and partnership between Russia and Ukraine, this agreement is expected to ensure friendly relations between the two countries is good and they can help each other(Kappeler, 2014). However, all of this is just wishful thinking, in reality after the signing of the agreement Russia's relations with Ukraine were not completely good but there were still many disputes on both sides. In 2014, relations between the two countries, namely Russia and Ukraine, increasingly experienced a bad point. Russia sent troops to Crimea to annex Ukraine, apart from that Russia also showed its support for the separatist movement in Ukraine's Donbass. As a result of Russia's actions, Ukraine finally took action in 2019 to end the Friendship Agreement. Apart from that, in 2005 and 2014, a revolution occurred in Ukraine, in which Ukraine rejected Russian supremacy and looked for ways to join the European Union and NATO (North Atlantic Treaty Organization).(Syahbuddin & Tati Haryati, 2022). From there, in 2022, precisely on February 24 2022, Russia, furious with Ukraine's actions, finally decided to carry out an armed attack on Ukraine.

Due to Russia's actions against Ukraine, the ICC Judge issued/issued an arrest warrant against the President of Russia, namely Vladimir Putin, who was allegedly responsible for the actions against Ukraine on the basis of Universal Jurisdiction. The Principle of Universal Jurisdiction is the principle of international law that a country can exercise its jurisdiction by adjudicating criminal acts that occur in a country as the perpetrator or victim of the crime that occurred. The arrest warrant was issued because of Russia's actions. Apart from the actions above, Russia was also held responsible for the alleged deportation of children from Ukraine to Russia. Some sources say that apart from doingThe Molfar OSINT Community conducted

an investigation into the forced deportation of children from Ukraine, which then presented the point that: Russian officials, with the help of armed groups organized the transfer of Ukrainian children from TOT to the Russian Federation; The forced deportation of children was carried out by a company led by Maria Lvova-Belova; headquarters coordinated its work on TOT directly with the Russian command (Molfar, 2022). Based on these accusations, the ICC issued an arrest warrant against the President of Russia, namely Vladimir Putin. However, the Russian Arrest Warrant rejected the arrest warrant for the ICC's jurisdiction, Russia stated that it was not a member state of the ICC and had not ratified the 1998 Rome Statute. Russia stated that the ICC could not exercise this jurisdiction. This jurisdiction applies only to countries or one of the parties that ratified the 1998 Rome Statute, Ukraine and Russia are not countries that ratified the 1998 Rome Statute.

When viewed from international law, the ICC's jurisdiction over Russia applies on the basis of the Universal Jurisdiction that every country has. The existence of universal jurisdiction applies to all countries if the crime committed is included in International Crime, the international court or ICC has jurisdiction over the perpetrator or place where the crime was committed and this does not conflict with international law, the Russian president also stated that he firmly rejects the ICC's actions. From the point of view of evidence and its fulfillment, the ICC should have quite an important role. The ICC also has the authority to decide whether the legal process can proceed and whether the allegations are serious and true in accordance with existing provisions. (Novalinda, 2021) Based on this, a problem arises.

METHOD

This journal uses a Normative Juridical type research method where this journal examines concepts, rules, principles, theories and statutory regulations as well as the opinions of existing legal experts, this regarding the ICC's Jurisdiction regarding the Legalization of the Arrest Warrant for the President of Russia Based on the Principles of International Law of the 1998 Rome Statute and the Russian Party's Rejection of the ICC's Arrest Warrant. This journal research uses a Conceptual Approach where in conducting research this journal refers to legal principles that can be found in the views of experts or legal doctrines regarding international law (Susetio & Muliawan, 2023). This research was carried out by means of a literature study which examined the results of legal texts and legal documents which were then analyzed perspectively and descriptively.

RESULTS AND DISCUSSION

Legalization of the arrest warrant for Russian President Vladimir Putin on the basis of a non-ICC member state or a state that has not ratified the Rome Statute

From the conflict between Russia and Ukraine, in 2013 Ukraine experienced a crisis and the President of Ukraine rejected an agreement with European Union countries; in 2014 Russian military forces took the Crimea region, in 2018 Ukraine joined NATO to conduct large-scale air force exercises; Russian President Vladimir Putin is needed to help the leaders of the Separatist Group in Eastern Ukraine. Due to several reasons, Russia, which was furious with Ukraine's actions, finally decided to carry out an armed attack on Ukraine on February 24 2022. (Study et al., 2023) And Russia is suspected of carrying out deportations of Ukrainian children who have been taken from their families, separated from their parents and then transported to Russia and detained in orphanages in Russia. there are around 200,000 children. The ICC exercising its jurisdiction sent arrest warrants to the Russian president, Vladimir Putin and Lvova-Belova on March 17, 2023. *“On 17 March 2023, ICC Pre-Trial Chamber II was issued warrants of arrest for two individuals in the context of the situation in Ukraine: Mr Vladimir Vladimirovich Putin, President of the Russian Federation, and Ms Maria Alekseyevna Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation.”* (Fadi El Abdallah, 2023)

On statementThe statement stated that at the ICC II Pre-Trial Session, the ICC issued arrest warrants against Russian President Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, Commissioner for Children's Rights at the Judicial Office of the President of the Russian Federation. The President of Russia firmly denied the demands of the International Court of Justice (ICC) on the grounds that Russia is not a country that recognizes the existence of the ICC and the 1998 Rome Statute or what is called a Non-State Parties country.

In Universal Jurisdiction, the ICC can exercise its jurisdiction over non-state parties if there are conditions:

1. Submitting the case by the PPB to the ICC, the ICC can exercise its jurisdiction. In carrying out its jurisdiction, the ICC also uses the principle of admissibility as stated in the 1998 Rome Statute. To carry out an investigation or carry out an investigation, the ICC must receive a referral from the UN Council.
2. In cases where citizens of Non-State Parties commit crimes against the state or in a country whose territory is a member of the ICC or which has ratified the Rome Statute. (Territorial Jurisdiction).In the ICC Jurisdiction, one of them is Territorial Jurisdiction:

In the Rome Statute, the ICC can exercise its jurisdiction over anyone, whether from an ICC member country or from a non-party country, as long as the crime is committed within the territory of the relevant country or not, meaning a country that is a party to the 1998 Rome Statute or not.

3. In the case of non-state parties, countries also agree to implement ICC jurisdiction based on crimes committed by the 1998 Rome Statute. (Universal Jurisdiction) This third factor can be seen in terms of Universal Jurisdiction, which means that non-state parties delegate their jurisdiction to the ICC to conduct trials. against criminals in their country(Widiasa, 2018).

Therefore, according to Russia, the ICC cannot exercise its jurisdiction because Russia has not ratified the Rome Stauta. Jurisdiction applies only to member countries and countries that ratify it. On the United Nations Treaty Collection website, Russia has ratified the 1998 Rome Statute but Russia left the ICC in 2016. However, if seen and linked to Universal Jurisdiction based on International Law, if the crime is included in International Crime, then Jurisdiction has the right to be carried out by all country, without having to ask for permission from the perpetrator's country of origin. Basically, the origin of Universal Jurisdiction is from commitments from all countries which are then delegated to national communities, one of which is the ICC (International Criminal Crime). Furthermore, the country which has the right to carry out its jurisdiction delegates it to the ICC and the inability or unwillingness of a country to carry out justice.

International law experts say that parties to the 1998 Rome Statute, countries that ratify it have territorial jurisdiction over crimes that attack their territory. Then crimes committed by perpetrators from countries that do not ratify can be submitted to the ICC. However, if the two countries do not ratify the 1998 Rome Statute or are non-state parties, if the crime committed is included in the category of International Crime based on Universal Principles in international law, all countries have or can exercise jurisdiction without regard to the nationality of the perpetrator or the place where it was committed. the crime.(Sefriani, 2007)

Ukraine could exercise its Universal Jurisdiction by delegating to the ICC its inability to prosecute perpetrators of crimes that harm its country. So the ICC can exercise its jurisdiction on the basis of a country's inability and unwillingness as regulated in the 1998 Rome Statute Article 17 paragraph (2) and paragraph (3).

The basis for the Russian President's rejection of the Arrest Warrant is based on International Law

In the statement above, it is explained regarding the ICC's jurisdiction to issue arrest warrants based on the Universal Principle. According to the existing provisions, it cannot be blamed, but the President of Russia also has the right to reject the alleged arrest warrant from the ICC. Russian President Vladimir Zelensky Putin and Russia's Commissioner for Human and Child Protection, Lvova-Belova, were named as suspects by the ICC on charges of deporting children and attacking Ukraine. The actions alleged by the ICC against Russia were firmly denied by the Russian Delegation at the UN Security Council. The actual actions carried out by Russia were aimed at rescuing or evacuating people and children within the area of the ceasefire, this was in accordance with existing provisions, where in the event of war civilians should not be attacked by the belligerents.

The rejection of the arrest warrant issued by the ICC was also based on several things, the Russian side, especially the President of Russia, namely Vladimir Putin, and his staff rejected the arrest warrant firmly on the following grounds:

1. Principle of Unwillingness and Unable

In its statement, Russia stated that it firmly rejects the arrest warrant for President Vladimir Putin because what the ICC alleged in the arrest warrant, according to Russia, is inappropriate. According to Russia, what is alleged about the deportation carried out by Russia is completely untrue. Maria Zakharova, a spokesperson for the Russian Minister of Foreign Affairs, stated that she did not want to present the perpetrator accused of being the perpetrator of the act of deporting Ukrainian children to Russia before the ICC. President Putin and Maria Belova were not proven to have committed the crimes mentioned in article 5 of the Rome Statute, where the Russian side stated that the deportation of the children was not true because what the Russian side was doing was to rescue the children from the ceasefire area. So that Russia's unwillingness or unwillingness has the right to reject the arrest warrant or even ignore the letter based on the principle of Russian unwillingness or unwillingness to bring the perpetrator before the ICC trial.(Hafizh et al., 2023)

Basically, according to the existing provisions, it can be said that a country is declared incapable in a case by the ICC if a country does not have the capacity to arrest a suspect to obtain the necessary evidence and testimony or carry out justice because of its absence or because it cannot function as a whole or part of a country's national legal system, then in the standards the purpose of the article is not explained in detail and still raises questions that cannot be answered by the Rome Statute itself.(Aulia, 2021)

If seen from Unable, this is the same as the principle of Unwillingness where the Russian State is unable to carry out the ICC arrest warrant because the ICC is unable to obtain evidence that President Vladimir Putin and Maria Belova carried out the alleged deportation of the child. According to the Russian Permanent Representative at the UN, Vasily Nebezia, who denied these accusations, according to Nebezia, what Russia did was not a crime. Deportation because millions of people and children were evacuated to Russia with their parents or guardians, apart from that, according to him, Russia found that only a few children in orphanages were without the care of guardians or parents. Nebezia also emphasized that the Russian party had the main aim in carrying out this action, namely to provide a sense of security and keep them away from the threat of danger in conflict areas, as well as to ensure that children -Children will be reunited with their families and not abandoned in orphanages. The Russian side is also willing to serve or help if parents want to look for their children who were separated from them during the evacuation by contacting the office of Lvova Belova as Commissioner for the Protection of Human Rights of Russia. According to Nibezia, so far the Russians have reunited 15 children from 8 families

2. Not a Party that recognizes or ratifies the 1998 Rome Statute and the International Criminal Court.

The basis for rejection in the first point is not very strong, so the first basis for rejection is strengthened by the basis for rejection which will be discussed in the second point, namely that Russia is not a party that recognizes or ratifies the 1998 Rome Statute and the International Criminal Court (ICC). Based on history or the history of the creation/formation of the ICC, the ICC is the International Criminal Court which was formed on the basis of the 1998 Rome Statute, so indirectly countries that do not recognize or agree with the Rome Statute can also be said to be countries that are not included as members of the ICC or non-state countries. parties. The President of Russia, namely Vladimir Putin, and the Spokesperson for the Minister of Foreign Affairs of Russia, namely Maria Zakharova, firmly rejected the arrest warrant on the basis that Russia is not a member of the ICC and is not a country that ratified the 1998 Rome Statute. This is in accordance with article 12 paragraph (2) and (3) the 1998 Rome Statute. According to Article 12 paragraph 2 and paragraph 3 of the 1998 Rome Statute, it is explained that: "In terms of article 13, paragraphs (a) or (c), the Court may exercise its Jurisdiction when one or more of the following States are parties to this Statute or have accepted the Court's Jurisdiction in accordance with paragraph 3:

- a. *The State which has jurisdiction over the territory in which the act in question occurred or, if the crime was committed on board a ship or aircraft, the State in which the ship or aircraft is registered;*
- b. *A country where the person accused of a crime is a citizen."*

"If the acceptance of a State which is not a party to this Statute is required under paragraph 2, that State may, by a declaration submitted to the Registrar, accept the exercise of jurisdiction by the Court in respect of the crime in question. States accepting to cooperate with the Court without further delay or exception in accordance with section 9."(ELSAM, 2005)

In accordance with the article above, Russia and Ukraine, which are not members of the ICC, cannot be tried in the International Court of Justice. Apart from that, regarding Ratification, Russia is also not a country that ratified the 1998 Rome Statute, historically in making the 1998 Rome Statute agreement, Russia only participated in signing the Agreement but did not involve itself in membership of the ICC, moreover, Russia also withdrew from signing the Agreement. The 1998 Rome Statute. Regarding the issuance of letters by the ICC, in fact the ICC cannot exercise its authority only based on existing universal principles, but the ICC must also remember that it can operate with the participation of its member countries. So if the majority of countries refuse to participate in the order to arrest the Russian president then the ICC cannot carry out the trial. Apart from that, the ICC also needs to pay attention to the principles contained in Article 12 of the Rome Statute, which clearly states that a country that does not recognize this Agreement does not have the ICC within its authority. If the ICC continues to insist on implementing its authority on the basis of universal principles, there will be an overlap in the Principles. which is in the 1998 Rome Statute because Russia is also not a country that ratified the Rome Statute.

CONCLUSION

In the conflict between Russia and Ukraine which made the ICC exercise its jurisdiction, the ICC issued an arrest warrant against the Russian President because of the alleged deportation of 200,000 children from Ukraine to Russia. However, there are many considerations regarding the warrant for the arrest of the Russian President due to several factors. Russia and Ukraine are not member countries of the ICC or non-state parties. This is contrary to the Rome Statute article 12 and also article 13. The ICC can exercise its jurisdiction within the territory of countries that ratify it or are members. However, on the

basis of Universal Jurisdiction, every country associated with the 1998 Rome Statute Article 17 paragraph (2) and paragraph (3) of the ICC can exercise Universal Jurisdiction over delegates from countries related to or victims of international crimes without having to ask for permission from the perpetrator of the crime. This jurisdiction is delegated to the ICC and is based on the inability or unwillingness of a country to carry out justice.

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