

Implementation of the Execution of ICC Decisions Regarding Non-Roma Statute 1998 Countries in International Law in Indonesia



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ABSTRACT: The emergence of International Criminal Courts through its Rome Statute of 1998 in 2002 has given rise to a spirit of accountability for the weaknesses in law enforcement within the international community. The establishment of the International Criminal Court (ICC) is a missing link in the chain after the creation of the International Court of Justice (ICJ), which has jurisdiction over issues involving states as its subjects.

KEYWORDS: Rome Statute, Jurisdiction, ICC

INTRODUCTION

International law, fundamentally aimed at regulating the relations between states on the international level, is primarily conducted by states as one of the subjects of international law. Meanwhile, international law is related to the rights and obligations of states in their interactions with each other. Therefore, it is not too critical to question the existence of supreme authority in international law. This is because, even without a supreme authority, most states adhere to international agreements. Recent violations of international law indicate an increase in line with the international community's development, making it a topic of significant interest. In reality, states, as subjects of international law, submit to and abide by the principles of international law in resolving international disputes. The co-coordinative structure of the international community is, among other things, characterized by the absence of supranational bodies above the subjects or members of the international community, who are equal in status to each other. In the international arena, April 11, 2002, is remembered as a milestone in advancing and implementing international justice. The Rome Statute of the International Criminal Court of 1998 was ratified by 10 countries simultaneously. This increased the number of parties that ratified the ICC Statute to sixty countries. This means the qualification for applying to the International Criminal Court (ICC) has been achieved. The emergence of the International Criminal Court (ICC) along with the Rome Statute in 1998 in 2002 seemed to quench the thirst for the lack of a policing institution. For the international community, the existence of the International Criminal Court has been a missing link since its formation. The International Court of Justice (ICJ) only has jurisdiction over states. The reasons why the United Kingdom, France, Canada, and Italy are very interested, along with the majority of NATO members supporting the presence of the International Criminal Court, are based on their belief that the existence of the International Criminal Court can prevent forces acting in other countries from committing severe violations. This is not in line with the United States' desire regarding the authority of the ICC because the United States has around 200,000 of its troops stationed in other countries, carrying out government duties or serving as military members to maintain peace. Due to this country's refusal to ratify the Rome Statute of 1998, and in addition to their perspective, the presence of this institution is also meant to serve as a warning to tyrants that the crimes committed in their countries will not go unpunished. In contrast to the International Criminal Court, Indonesia and other countries are reluctant to ratify the Rome Statute of 1998. Their concern is that the ICC could potentially affect national sovereignty. In its mechanism, the International Criminal Court offers national courts the possibility of prosecuting criminals. By not participating in the ratification, the country believes that they are not bound by the Rome Statute of 1998, leading them to believe that the ICC cannot touch its citizens if they commit crimes within the jurisdiction of the ICC. Some countries that oppose the International Criminal Court, particularly the United States, argue that it is contrary to international law for the ICC's jurisdiction to be extended to non-party groups of the Rome Statute of 1998. This assumption is justified and well-understood because there is a principle in international contract law that states, "*Pacta Tertis Nec Nocunt Nec Prosunt*," meaning agreements do not give rights or obligations to third parties without their consent. However, ICC members do not violate international law in certain situations when the ICC's jurisdiction can be extended to non-state actors who have committed international crimes. The establishment of the International Criminal Court has its roots in the history of previous international criminal justice institutions. The very first precursor to the International Criminal Court was the International Military Tribunal (IMT) or the Nuremberg Trials in 1945 and the

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International Military Tribunal for the Far East (IMTFE) in 1946. The IMT was established on the initiative of the victorious Allies to prosecute the leaders of Nazi Germany, both civilians and military personnel, as war criminals, first declared through the London Agreement on August 8, 1945. Some defendants were acquitted in the IMT, but no one escaped punishment in the IMTFE (International Military Tribunal for the Far East). Another distinction is the legal basis for their establishment. In the IMT, all Nazi German leaders were imprisoned, whereas in the IMTFE, Emperor Hirohito had no influence as a Japanese leader and was left untouched. This was due to an agreement between the Japanese government and its allies, particularly the United States, not to interfere with Hirohito's position as the supreme authority in Japan. Based on these differences, it can be concluded that both of these courts are not independent and impartial. There are also similarities and differences between the two courts. Their similarity lies in the fact that both courts were established based on the same United Nations Security Council resolution. The difference is that the formation of the ICTR (International Criminal Tribunal for Rwanda) resulted from the international community's assessment through the United Nations Security Council of serious human rights violations in the former Yugoslavia. Its establishment did not receive support, especially from the "New Yugoslavia" consisting of Serbia and Montenegro. Despite being highly successful compared to the two International Criminal Tribunals after World War II, both tribunals still have limitations. These limitations include, among others, a lack of legal protection, particularly concerning relations with the countries where serious human rights violations occurred, failure to resolve existing issues, and the extent to which the trial process depends on the category of conflict, i.e., internal conflicts or international conflicts. Learning about the history of the establishment of the four previous tribunals, all of them were temporary in character and had different weaknesses. As mentioned earlier, when the desire for a more permanent tribunal is considered sufficient, it cannot be offered any longer. A more permanent institution like the ICC can bring hope for advancing the effectiveness and efficiency of legal protection against international crimes. With the creation of the ICC, it is expected that all international crimes falling under its direct jurisdiction can be addressed without the need to await the establishment of new tribunals, new laws, and their legal apparatus.

RESEARCH METHODOLOGY

Research is a process, a series of systematically planned steps conducted in a planned and systematic manner to obtain solutions to problems or answers to specific statements. Research is essentially an effort of exploration, not merely a careful observation of a readily accessible object. This research uses normative legal research methods, including the approach of statutory and international regulations and a case-by-case approach. The applicable legal sources include primary legal materials, secondary legal materials, and tertiary legal materials. The data collection technique used is library research, and the data analysis technique employs qualitative descriptive analysis. The findings indicate that the International Criminal Court (ICC) of 1998 has territorial jurisdiction over all crimes committed within its territory. This applies to all state criminals, regardless of whether they are parties to the Rome Statute (nonstate parties). If the crimes fall into the category of international crimes, then based on universal principles known in international law, all countries, including international courts, have jurisdiction over the perpetrators, regardless of the perpetrator's nationality or the location of the crime. The study concludes that this does not contradict international law.

PROBLEM STATEMENT

How does the International Law Review regarding Non-State Parties of Statute 1998 in the Execution of ICC Decisions?

RESULTS AND DISCUSSION

International Legal Review regarding Non-State Parties of Statute 1998 in the Execution of ICC Decisions

The international court, located in The Hague, Netherlands, was established through the Rome Statute of 1998. Although both have seats in The Hague, this institution is not related to other international judicial bodies, including the International Court of Justice (ICJ), one of the principal organs of the United Nations (UN). The ICJ was established concurrently with the formation of the UN in 1945, and its statute is integrated into the UN Charter (The Charter of the United Nations), and its budget is based on the UN budget. In contrast, the ICC is an independent institution with its organizational structure distinct from the UN. Similarly, its operational budget is based on contributions from the participating states in the Rome Statute of 1998. In other words, the ICC is an international legal subject with an international personality. Consequently, the ICC can exercise various international legal capacities in the performance of its functions. The ICC can carry out its functions and jurisdiction within the territory of member states and through specific agreements in the territory of other states. Even though it is located in The Hague, Netherlands, the ICC can conduct its proceedings in other countries as needed.

In this regard, the ICC functions as a permanent criminal enforcement body with authority to enforce its jurisdiction over individuals considered to have committed heinous crimes, which are considered extremely serious offenses and draw the attention of the entire international community (the most serious crimes of concern to the international community as a whole), because they are carried out arbitrarily and without consideration for the extent of their criminal actions, causing distress to human sensibilities and are

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considered threats to the interests, security, and well-being of the people and the world. These criminal actions refer to those outlined in Articles 5, 6, 7, and 8 of the Rome Statute of 1998, including:

- a. The crime of genocide
- b. Crimes against humanity
- c. War crimes
- d. The crimes of aggression.

This is carried out within the framework of international cooperation, with the additional principle that if there is no effective legal process at the national level, action can only be taken under the jurisdiction of the ICC. Therefore, the jurisdiction of the ICC is based on fundamental principles. However, the jurisdiction of the International Criminal Court encompasses four types of crimes without the prior consent of the State parties to the Agreement because, based on the respective contracting parties' basic rules, the ICC's jurisdiction automatically applies to these four types of crimes. These provisions are based on the automatic principle, also a fundamental principle outlined in Articles 12, 13, 14, and 15 of the Constitution/Statute. In the Ukraine-Russia conflict, Karim Khan, the Chief Prosecutor of the International Criminal Court (ICC), announced that the arrest warrant for Russian President Vladimir Putin is in effect for life because War Crimes have no limitations. The ICC emphasized that the ICC's arrest warrant remains valid even after the end of the Russian war in Ukraine. This ICC decision is based on a post-World War principle derived from the Nuremberg War Crimes, which, following the World War II War Crimes Tribunal, states that an individual, wherever they may be, must recognize the existence of the law and the power that imposes responsibility. The arrest warrant is directed at Putin and the Russian Commissioner for Children's Rights, Maria LvovaBelova. The International Criminal Court has announced the arrest. The International Criminal Court charges Putin with war crimes involving the illegal deportation and transfer of civilian populations and children from the occupied territories of Ukraine to the Russian Federation. The Court states that there is reasonable grounds to believe that Putin personally bears responsibility for the alleged crimes. The International Criminal Court (ICC) has stated that it will advance investigations into alleged military aggression crimes committed by Russia since the beginning of the invasion. The Netherlands has provided a team of forensic specialists to Ukraine on behalf of the ICC to gather evidence of human rights violations. Around ten Russian military personnel, including two sergeants, four corporals, and four soldiers, are suspected of committing human rights violations during their one-month occupation of Bucha, Ukraine. The Prosecutor General of Ukraine, Iryna Venediktova, has indicated that they have collected evidence in over eight thousand cases of alleged war crimes since the war began. These crimes include the killing of civilians, the destruction of civilian facilities, and verbal abuse (Gunawan, 2022). Ukraine and countries opposing this aggression and human rights organizations have claimed that Russian forces have taken the lives of civilian residents in Bucha. Additionally, they have committed actions that violate human rights during the military aggression. The Russia-Ukraine invasion has resulted in numerous violations, including:

- *Article two (2) paragraph four (4) of the UN Charter regarding the prohibition of the use of force, and secondly, demands the UN General Assembly Resolution on the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty,*
 - *Then, UN General Assembly Resolution No. 2625 of 1970 on the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States,*
 - *UN General Assembly Resolution No. 3314, issued on December 14, 1974, regarding aggression (Mamfaluthy, 2014).*
- Another mistake made during the invasion was the inconsistency with bilateral agreements previously agreed upon by the states. These agreements include (Mamfaluthy, 2014),
1. *Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons, a memorandum on nonproliferation of nuclear weapons, dated December 5, 1994, in Budapest.*
 2. *Agreement between the Russian Federation and Ukraine on the Status and Conditions of the Black Sea Fleet of the Russian Federation Staying on Ukrainian Territory in 1997. This bilateral agreement states that the Russian government must respect the sovereignty and territorial integrity of Ukraine and should not use threats or the use of force, such as military intervention, against the sovereignty of Ukrainian territory.*

The wrongdoing committed by Russia has violated the human rights of the Ukrainian people and is not in accordance with the provisions of the Restatement of the Foreign Relations Law of the United States 3rd, where the Ukrainian people can file claims for violations of human rights based on general principles of law recognized by civilized nations. As we know, Ukraine has filed a lawsuit against Russia at the International Court of Justice due to Russia's military aggression that resulted in acts of genocide. Genocide is a grave category of crime because it results in death and violates individuals' right to life, which is a right established in the European Convention for the Protection of Human Rights and Fundamental Freedoms. These actions have caused significant damage to Ukraine, where the Russian Federation has violated international law. As a result of these violations, the Russian Federation claims responsibility for causing the damage and faces various sanctions. To date, the claims and sanctions imposed on

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the Russian Federation by multiple parties are a form of punishment for Russia's willingness to take responsibility. These sanctions include fines or economic policies, as well as the arrest warrant for Russian President Putin, who is individually criminally responsible for failing to exercise proper control over both civilian and military subordinates who committed war crimes, serving as a penalty for a state that does not comply with international law.

CONCLUSION

In this case, Russia's national interest is to uphold its sovereignty by strengthening its position as a significant power and becoming an influential state in the international arena. Under President Putin's leadership, particularly in the military sphere, Russia strongly opposes terrorism, which it considers a threat to its security. Russia sees countering terrorism as a matter of great concern when safeguarding the integrity of its nation. However, the war conducted by Russia in Ukraine has resulted in war crimes that directly affect the civilian population, including unintentional civilian killings, destruction of public facilities, arbitrary arrests and detentions, torture, and rape. In pursuit of Russia's interests in the invaded country, it has relentlessly carried out a brutal and continuous invasion, justifying any means necessary. Russia has its reasons for countering terrorism, as it is a significant concern for ensuring national security. As the President of Russia, Putin is considered responsible by the ICC for the invasion that occurred during the Russia-Ukraine war. The ICC deems that President Putin should be held accountable for his actions, which have violated international law. Consequently, the ICC issued a warrant for Putin's arrest because it believes that there should be no crime of genocide or crimes against humanity; such actions must be punished. Furthermore, the ICC reiterated its call to halt Russia's military aggression against Ukraine and to withdraw its military forces from Ukrainian territory. Russia could commit to not repeating such an attack, representing a form of responsibility towards Ukraine.

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