

INTERNATIONAL CRIMINAL LAW: KIDNAPPING VENEZUELAN PRESIDENT NICOLAS MADURO

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Abstrak

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This study aims to analyze the provisions of international criminal law regarding the kidnapping of heads of state and to examine whether such acts can be categorized as violations of international law and human rights. The urgency of this research lies in the importance of maintaining a balance between efforts to eradicate international crimes and respect for the fundamental principles of international law. The alleged kidnapping of Venezuelan President Nicolás Maduro has become a significant issue in the study of international criminal law because it has sparked debate about the boundaries between the enforcement of international law and respect for state sovereignty. The issues examined include the legality of kidnapping a sitting head of state and its implications for the principles of state sovereignty, non-intervention, and the immunity of the head of state. The research method employed is normative legal research, utilizing a normative juridical, conceptual, and case study approach through an analysis of various international legal instruments, doctrines, and relevant literature. The results of the study indicate that the act of kidnapping or forcibly arresting a head of state without the consent of the concerned state and without a legitimate international legal mechanism constitutes a violation of the principles of state sovereignty, non-intervention, and the immunity of the head of state. Law enforcement regarding alleged international crimes must be carried out through mechanisms recognized by international law.

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INTRODUCTION

International law was established to regulate relations among states based on fundamental principles such as state sovereignty, equality of states, non-intervention, and



respect for human rights. One of the principles that holds a significant position in the international legal system is state sovereignty, namely the right of every state to manage its internal affairs without interference from other states. This principle serves as the primary foundation for maintaining stability and order in international relations.

In the practice of international relations, various events often arise that give rise to legal debates, particularly when the actions of one state are deemed to violate the sovereignty of another. One issue of concern to the international community is the alleged kidnapping or attempted arrest of a head of state by a foreign party. This issue relates not only to aspects of international politics but also to the application of international criminal law, the protection of human rights, and respect for the immunity of a sitting head of state. The case involving Venezuelan President Nicolás Maduro serves as an interesting example to examine from the perspective of international criminal law. In recent years, Venezuela has experienced a complex political, economic, and social crisis. This situation has been exacerbated by various economic sanctions imposed by the United States on the Nicolás Maduro administration since 2015. These policies have triggered various international political dynamics that have impacted relations between Venezuela and other countries, particularly the United States.

As the situation has evolved, various allegations have emerged regarding Nicolás Maduro's involvement in transnational criminal acts, including alleged involvement in an international drug trafficking network. This situation has led to widespread speculation regarding the possibility of Nicolás Maduro's arrest or abduction by foreign parties to be tried outside of Venezuela. Such alleged actions have sparked controversy because they potentially violate fundamental principles of international law, particularly those concerning state sovereignty and the immunity of heads of state.

Under international law, a sitting head of state generally enjoys immunity *ratione personae*, which protects them from the criminal jurisdiction of other states during their term of office. This principle aims to ensure the smooth execution of state functions and to maintain diplomatic relations between nations. Therefore, the abduction or arrest of a head of state without following valid international legal mechanisms may be viewed as a violation of international law.

In addition to the principle of immunity, the abduction of a head of state may also constitute a violation of human rights. The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) guarantee every individual's right to liberty and personal security and prohibit arbitrary arrest and detention. Thus, the abduction of a head of state not only raises issues regarding interstate relations but also concerns the protection of universally recognized fundamental human rights. Based on the above discussion, an examination of the alleged abduction of Venezuelan President Nicolás Maduro is important to analyze from the perspective of international criminal law. This analysis is necessary to understand how international law regulates actions against a sitting head of state in office, the limits of a state's jurisdiction in enforcing international law, and the implications for the principles of state sovereignty, the immunity of heads of state, and the protection of human rights.

LITERATURE REVIEW

Review According to International Law

International criminal law is a branch of law that regulates various acts considered international crimes as well as the mechanisms for holding perpetrators of such crimes

criminally accountable. International criminal law evolved from the international community's need to maintain world order and to address various acts deemed to threaten international peace and security. In its development, international criminal law has come to regulate not only the responsibility of states but also the criminal liability of individuals who commit international crimes.

Generally, international criminal law aims to uphold justice regarding crimes that have a far-reaching impact on the international community. Such crimes not only harm individuals or a specific state but can also threaten global stability. Therefore, the international community, through various legal instruments, strives to establish a legal system capable of prosecuting and preventing these international crimes. In international criminal law, several types of international crimes are recognized as the most serious offenses, namely genocide, crimes against humanity, war crimes, and the crime of aggression. These crimes possess specific characteristics that distinguish them from ordinary crimes due to their far-reaching impact and their nature, which violates universally recognized humanitarian values.

One of the current mechanisms for enforcing international criminal law is through an international judicial body, namely the International Criminal Court (ICC). This institution was established under the Rome Statute of the International Criminal Court in 1998 with the aim of prosecuting individuals who commit the most serious international crimes. The Court has jurisdiction over individuals suspected of committing genocide, crimes against humanity, war crimes, and the crime of aggression.

An Overview Under International Law

International law is the body of rules and legal principles governing relations among states and other subjects of international law within the international community. It aims to establish order and stability in interstate relations and to regulate various aspects of international life, such as diplomatic relations, international trade, the settlement of international disputes, and the protection of human rights. One of the fundamental principles of international law is the principle of state sovereignty. This principle states that every state has full authority over its territory and has the right to manage its internal affairs without interference from other states. The principle of state sovereignty is the cornerstone of modern international relations, emphasizing equality among states within the international system.

In addition to the principle of state sovereignty, international law also recognizes the principle of non-intervention, which prohibits a state from interfering in the internal affairs of another state. This principle aims to maintain stability in relations between states and prevent international conflicts that could disrupt world peace. In international relations, heads of state hold a very important position because they are the symbols and representatives of the states they lead. Therefore, international law provides special protection to heads of state through the principle of head-of-state immunity. This principle grants heads of state legal immunity from the jurisdiction of foreign courts during their term of office.

The principle of head-of-state immunity is also related to the concept of diplomatic immunity, which is regulated in various international conventions, one of which is the 1961 Vienna Convention on Diplomatic Relations. This convention sets forth various provisions regarding diplomatic relations between states as well as the protection of state officials in the performance of their diplomatic duties.

RESEARCH METHOD

This study is a legal research project specifically applied within the field of law. According to Peter Mahmud Marzuki, legal research is the process of identifying legal rules, legal principles, and legal doctrines to address the legal issues at hand.⁶ This study was conducted by examining various legal provisions and principles of international law relevant to the case under investigation.

The approach used in this study is the normative legal approach, also known as doctrinal research.⁷ This approach aims to examine written legal provisions (law as it is written in the books) as well as various legal principles that have developed in the practice of international relations. Through this approach, the study focuses on analyzing international legal norms related to state sovereignty, the immunity of heads of state, and the prohibition on intervention in international relations, particularly in the context of the case involving Venezuelan President Nicolás Maduro.

Data collection for this study was conducted through library research, namely by examining various legal materials classified as secondary data. These data consist of primary, secondary, and tertiary legal materials. Primary legal materials include various international legal instruments, international treaties, and provisions related to the immunity of heads of state, state sovereignty, and the principle

non-intervention. Secondary legal materials consist of books on international law, scholarly journals, academic articles, and various scholarly works discussing international criminal law and international relations. Tertiary legal materials include legal dictionaries, legal encyclopedias, and various other reference sources relevant to the research topic.

In addition, this study also employs a conceptual approach and a case-based approach. The conceptual approach is used to analyze fundamental concepts in international law, such as state sovereignty, the immunity of heads of state, and the principle of non-intervention. Meanwhile, the case approach is used to examine and analyze events related to the alleged kidnapping or attempted arrest of Venezuelan President Nicolás Maduro from the perspective of international criminal law. The data obtained were then analyzed qualitatively through the interpretation and examination of applicable legal norms to draw conclusions relevant to the research problem.

RESULT AND DISCUSSION

The Legality of the Kidnapping of Venezuelan President Nicolás Maduro from the Perspective of International Criminal Law

Under international criminal law, the act of kidnapping a person located in the territory of another state is fundamentally unjustifiable if carried out without a valid legal basis and without going through recognized mechanisms of international cooperation. The enforcement of international law must still adhere to procedures prescribed by international law, such as extradition, mutual legal assistance (MLA), or competent international judicial mechanisms. Therefore, even if there is suspicion of a person's involvement in an international criminal offense or a transnational crime, a unilateral act of kidnapping cannot be considered a legitimate instrument of law enforcement.

According to Antonio Cassese, international criminal law is founded on the principle that the prosecution of perpetrators of international crimes must be carried out through legal procedures recognized by the international community. The use of coercive measures outside existing legal mechanisms actually risks creating new violations of

international law that run counter to the very purpose of law enforcement itself. Thus, if another country attempts to abduct Venezuelan President Nicolás Maduro without a valid legal basis, such an action cannot be justified as a form of international criminal law enforcement.

The legality of an action under international criminal law is determined not only by the objective it seeks to achieve but also by the means or procedures employed. In this context, the principle of due process of law applies, requiring that any arrest be carried out based on clear legal authority and through lawful procedures. Michael P. Scharf explains that efforts to combat international crime must remain within the framework of international law so as not to undermine the fundamental principles that form the foundation of the international legal order. Therefore, even if there are allegations against Nicolás Maduro regarding his alleged involvement in transnational crimes, an act of kidnapping cannot be considered a legitimate means of law enforcement.

By way of comparison, in the 2002 Arrest Warrant Case (Democratic Republic of the Congo v. Belgium), the International Court of Justice (ICJ) affirmed that a state's actions in pursuing legal proceedings against high-ranking officials of a foreign state must comply with applicable international law. Although that case directly concerned the issuance of an arrest warrant against the Minister of Foreign Affairs of the Democratic Republic of the Congo, the ruling demonstrates that cross-border law enforcement cannot be carried out arbitrarily and must be subject to the rules of international law. This ruling shows that the desire to prosecute a person suspected of committing an international crime cannot serve as a justification for disregarding applicable legal procedures.

Furthermore, international legal practice shows that the mechanisms commonly used to bring a person before a court are extradition or surrender based on international cooperation. Malcolm N. Shaw states that extradition is a universally recognized legal mechanism in cross-border law enforcement because it provides legal certainty and ensures respect for the rights of the individual concerned. Thus, if there is a desire to prosecute Nicolás Maduro for certain alleged criminal acts, the proper course of action is through legitimate legal mechanisms, not through kidnapping.

Based on the above, it can be concluded that the act of kidnapping Venezuelan President Nicolás Maduro lacks legal validity from the perspective of international criminal law. The enforcement of international law must be carried out through procedures recognized by international law, such as extradition, mutual legal assistance, or proceedings before competent international judicial bodies. Thus, kidnapping cannot be justified as a tool for law enforcement because it contradicts the principles of legality and due process of law, which form the foundation of international criminal law.

Implications of Kidnapping on the Principle of State Sovereignty in International Law

State sovereignty is one of the fundamental principles of international law that has been universally recognized since the Treaty of Westphalia in 1648. This principle affirms that every state has the full right to regulate its internal affairs without interference from other states. In the modern international legal system, state sovereignty is explicitly enshrined in Article 2(1) of the Charter of the United Nations (UN), which states that the organization is based on the principle of sovereign equality of all its members. Thus, any action that violates a state's sovereignty is, in essence, a violation of the mutually agreed-upon international legal order.

In the context of the alleged kidnapping of Venezuelan President Nicolás Maduro, such an act has the potential to directly violate Venezuela's sovereignty. If a state arrests or kidnaps a citizen or official of another state within its jurisdiction without the consent of the state concerned, such an act constitutes a violation of that state's territorial integrity and sovereignty. Brownlie asserts that intervention in the jurisdiction of another state without permission constitutes a direct violation of that state's sovereignty that is prohibited by international law. Therefore, the act of kidnapping against President Maduro, if it actually occurred, cannot be separated from the dimension of a violation of Venezuela's state sovereignty.

The principle of state sovereignty is further reinforced by the principle of non-intervention, which prohibits any state from interfering in the internal affairs of another state. United Nations General Assembly Resolution No. 2625 of 1970 on the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States explicitly states that no state has the right to intervene, either directly or indirectly, in the domestic or foreign affairs of another state. Attempts by another state to arrest or abduct a sitting head of state clearly constitute a form of intervention that violates this resolution, as such actions directly interfere with state affairs that fall under the exclusive jurisdiction of the state concerned.

In the practice of international law, violations of state sovereignty through cross-border abductions have led to serious international disputes. One important precedent is the 1960 abduction of Adolf Eichmann by Israeli agents from Argentine territory. In that case, Argentina lodged a strong protest with Israel and brought the matter before the UN Security Council. The UN Security Council, through Resolution No. 138 of 1960, declared that Israel's arrest on Argentine territory without permission constituted a violation of Argentina's sovereignty. This precedent demonstrates that the international community consistently rejects cross-border arrests conducted without the consent of the state where the arrest took place, regardless of the severity of the crimes alleged against the individual in question.

Furthermore, international law also recognizes the principle of "male captus bene detentus," which raises the question of whether a person who has been unlawfully arrested can still be lawfully tried. Although some national jurisdictions have historically accepted this principle, modern international law tends to reject it because it is seen as justifying illegal actions that violate the sovereignty of another state. Cassese asserts that acceptance of the "male captus bene detentus" doctrine indirectly condones violations of state sovereignty, which contradicts the spirit of contemporary international law that upholds respect for human rights and the international legal order. Thus, the application of this doctrine in the Maduro case cannot be justified from the perspective of international law.

Based on the entire discussion above, it can be affirmed that the act of kidnapping Venezuelan President Nicolás Maduro has serious implications for the principle of state sovereignty under international law. This act not only violates Venezuela's territorial integrity as a sovereign state but also contradicts the principle of non-intervention, the prohibition on the use of force in interstate relations, and various universally recognized instruments of international law. The enforcement of the law regarding alleged international crimes must always be carried out through mechanisms that are legitimate and recognized under international law in order to maintain the stability of the international order.

CONCLUSION

The abduction of a head of state, particularly in the case of Venezuelan President Nicolás Maduro, lacks legitimacy from the perspective of international criminal law. Such actions contravene the fundamental principles of international law, namely state sovereignty, the principle of non-intervention, and the immunity of a sitting head of state. Under international criminal law, the enforcement of the law regarding alleged crimes cannot be carried out unilaterally through coercive measures such as kidnapping; rather, it must be conducted through legitimate and internationally recognized mechanisms, such as extradition, mutual legal assistance, or proceedings before international judicial bodies. Furthermore, cross-border abductions constitute a serious violation of state sovereignty because they interfere with another state's jurisdiction without its consent. This not only undermines the international legal order but also has the potential to trigger interstate conflicts and disrupt the stability of international relations. Thus, even if there are allegations of a person's involvement in international crimes, law enforcement efforts must still be carried out while respecting the principle of legality, due process of law, and applicable norms of international law, so that justice can be achieved without sacrificing sovereignty and the rule of international law.

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