

Extradition Law in Indonesia And its Urgency in Fighting International Crime



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ABSTRACT: The legal instrument for extradition has been regulated in the Republic of Indonesia Law no. 1 of 1979 in general, extradition is a result of asylum rights, namely the right to obtain political asylum, but at this time extradition is used to penetrate state boundaries in the sense of applying national criminal law for criminals who flee the country abroad, and to To create a civilized international civil society that upholds the truth, it is necessary to implement the law which is a manifestation of justice and truth itself.

KEYWORDS: extradition, asylum rights, civil society.

INTRODUCTION

Extradition according to Law No. RI. 1 of 1979 is the surrender by a country requesting the surrender who is suspected or convicted of committing a crime outside the territory of the country that submits it and within the jurisdiction of the territory of the country requesting the surrender because it has the authority to try and punish him. Extradition is carried out on the basis of an "agreement" (treaty) between the Republic of Indonesia and other countries whose ratification is carried out by law. If there is no agreement, extradition can be carried out on the basis of good relations and if the interests of the Republic of Indonesia so desire (Article 2 paragraphs 1 and 2).¹

According to JG Starke, the term extradition refers to a process whereby, based on a treaty or on the basis of reciprocity, a country surrenders to another country at its request, against a person accused or convicted of committing a crime committed against the law of the requesting country. The country requesting extradition has the competence to try the accused perpetrators of the crime.

Rational considerations that determine the law and practice of extradition, namely:

1. The common will of all States, to ensure that serious crimes will not go unpunished. A country whose territory is sheltering a perpetrator of a criminal act, is often unable to prosecute or punish him only because of the technical rules of criminal law or because it does not have jurisdiction. To close this gap, international law provides the argument "aut punire aut dedere", namely that the perpetrator of a crime must be punished by the country where he seeks protection or be handed over to a country that can and wants punishment against him.

The state in whose territory a crime occurred is the most capable of prosecuting the perpetrators of the crime, because more expanded evidence is available there, and that the state has the greatest interest in punishing the perpetrators of the crime, and has adequate facilities. at most to confirm the truth. So the most correct and most appropriate thing is that it is to the territorial state that the perpetrators of criminal acts who seek protection in other countries must be handed over.²

Extradition can also be interpreted as a formal surrender, either based on a pre-existing extradition agreement or based on the principle of reciprocity or good relations, on a person accused of committing a crime (suspect, defendant, accused) or someone who has been sentenced to a criminal sentence that has been convicted. has definite binding force (convict, convict), by the

¹ I Wayan Parthiana (2003) Hukum Pidana Internasional dan Ekstradisi. Bandung: Yrama Widya.

² Maringka, J. S. (2018) Ekstradisi dalam Sistem Peradilan Pidana. Jakarta: Sinar Grafika.

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country where he is located (the requested country) to the country which has jurisdiction to try or punish him (the requesting country), at the request of the requesting country, with the aim of trying and or implementing the sentence.³

From the brief formulation on extradition, several elements can be drawn, namely:

1. Subject elements, namely the requested country and the requesting country/countries;
2. The object element, namely the person requested, who can have the status of a suspect, accused, defendant, or convicted person;
3. Elements of procedures or procedures, which must be carried out according to certain procedures or procedures or formalities and;
4. The element of purpose, namely for the purpose of prosecuting and or punishing.

Among the four elements that should be highlighted here is element number 3, namely elements of certain procedures or procedures or formalities. It has been stated above that in order for the surrender or extradition of the requested person to be carried out, there must first be a request to hand over the person concerned from the requesting country to the requested country. Without a prior request from the requesting country to the country where the person concerned is located (the requested country), the latter country may not hand over the person concerned.

Requests to surrender must be made through diplomatic channels. Likewise, if the requested state approves or rejects the request of the state- the order must notify the requesting state- through diplomatic channels. Regarding the decision to grant or reject a request from the requesting country, high-ranking officials from the requested country such as the Attorney General, the Chief of Police, the Minister of Justice, and the Minister of Foreign Affairs are involved in providing considerations, for which a decision is ultimately taken by the competent authority. From the requested state.

It is very possible that a case concerning extradition has previously involved lower-level law enforcers, for example during arrests, detentions, guarding their security, and so on. This means that the issue of extradition is a state and inter-state problem. As an internal matter of the state, its implementation must comply. The country's national laws or regulations regarding extradition and other relevant national laws and regulations, such as criminal procedural law. Meanwhile, as a matter between countries, its implementation must be based on international treaties or customary international law on extradition.⁴

As an internal matter between countries and between countries, the decision to submit or reject the request for extradition of a requested person, of course, rests with high-ranking state officials who are authorized to represent or act for and on behalf of the state in matters of international relations. If the requested person is decided to be handed over by the requested state to the requesting state, his surrender must also follow certain procedures or procedures. For example, where and when the person concerned will be handed over, the vehicle used, what goods are also handed over, as well as the minutes of the handover, and so on.

From the above background, the problem can be formulated, how are the parameters in determining someone to be extradited, what are the conditions for extradition?

DISCUSSION

AZAS-AZAS EKSTRADISI

1. Azas kejahatan ganda (double criminality principle);

Menurut azas ini, kejahatan yang dijadikan sebagai alasan untuk meminta ekstradisi atas orang yang diminta, haruslah merupakan kejahatan (tindak pidana) baik menurut hukum negara-peminta maupun hukum negara-diminta. Hal ini tidak perlu Nama ataupun unsurnya Sama, mengingat sistem hukum masing-masing negara yang berbeda-beda. Sudah cukup jika hukum kedua negara sama-sama mengklasifikasikan kejahatan itu sebagai kejahatan atau tindak pidana.

2. Azas kekhususan (principle of speciality);

If the requested person has been handed over, the requesting state may only try and/or punish the requested person, only on the basis of the crime that is the reason for requesting his extradition. So he may not be tried and/or convicted of any other crime, other than the crime that is used as a reason for requesting his extradition.⁵

3. The principle of not surrendering the perpetrators of political crimes (non-extradition of political criminals);

If the requested State is of the opinion that the crime that is used as a reason for requesting extradition by the requesting State is classified as a political crime, then the requested State must refuse the request. Because it is difficult to determine objective

³ Atmasasmita, R. (1995) Pengantar Hukum Pidana Indonesia. Bandung: PT. Eresco.

⁴ Husein, Y. (2006) Makalah Seminar Tentang Bantuan Timbal Balik dalam Masalah Pidana. Bandung.

⁵ Parthiana, I. W. (2015) Hukum Pidana Internasional (Cet.II). Bandung: Yrawa Widya.

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criteria for political crimes, countries, either in treaties or in their extradition legislation, use a negative system, namely by stating explicitly that certain crimes are not declared political crimes, or are declared as crimes that can be committed. Be used as a reason to request or extradite the requested person (extraditable crime).⁶

4. The principle of not surrendering citizens (non-extradition of nationals);

If the requested person turns out to be a citizen of the requested country, then the requested country can refuse the request from the requesting country. This principle is based on the idea that the state is obliged to protect its citizens, and citizens have the right to obtain protection from their state. If the requested state refuses the request of the requesting state, the requested state is obliged to try and or punish its nationals based on its national law.

5. The principle of non bis in idem;

According to this principle, if the crime that is used as a reason for requesting the extradition of the requested person, turns out to have been tried and/or sentenced that has definite binding force, the request of the requesting country must be rejected by the requested country.

6. The principle of expiration.

The request of the requesting state must be refused if the prosecution or execution of a sentence for the crime which is used as a reason for requesting the extradition of the person requested has expired according to the law of one or both parties.

EXTRADITION STAGES

Seeing the extradition process starting from the beginning until the handover of the perpetrators of crimes from the requested country to the requesting country, there are three stages that must be passed, namely:

1. Phase I : Pre-Extradition;

2. Phase II: Extradition Process;

3. Phase III: Execution of Extradition;

The pre-extradition stage is the initial step taken before a request for extradition is submitted by obtaining information about the whereabouts of the wanted criminal. After knowing his whereabouts, a request for arrest and provisional arrest was submitted. The search, arrest and detention of criminals are generally carried out in cooperation through INTERPOL, but there are also countries which, in accordance with the legal provisions of their country, require that the request be submitted through diplomatic channels.

The extradition process begins with a request from the requesting country which has jurisdiction to try and or punish a person (the requested person) either in his legal status as a suspect, accused, accused, or convicted, to the requested country which is the country where the requested person resides. Or take refuge. The request must be through diplomatic channels, for example submitted by the head of state, prime minister, or foreign minister of the requesting country, to the head of state, prime minister or foreign minister of the requested country, either directly or through the ambassadors of each party. . The request must be accompanied by related documents, such as a document regarding the personal identity of the person requested, a description of the crime that is used as the reason for the request for surrender accompanied by articles of the alleged criminal law, and supporting evidence that is considered relevant. Then the requested state will decide whether to accept or refuse extradition under its domestic law. The decision must also be communicated through diplomatic channels.

The implementation of extradition can be carried out after there is a notification letter regarding the granting of extradition from the requested country. The notification letter must be accompanied by the place and time the person requested will be submitted by the requested country to the requesting country. Along with the surrender of the requested person, it can also be accompanied by the surrender of his movable property, goods used to commit the crime, and goods which are the result of the crime. More technically, the issue of the delivery of people and goods must be regulated in more detail by both parties.

The extradition procedures and mechanisms are standardized and have been recognized as customary international law, with legal principles outlined in legal rules so that extradition is now independent. In practice, even though extradition has become customary international law that is generally accepted, countries still need stricter and clearer arrangements in the form of bilateral and multilateral international agreements.⁷

Provisions regarding requests for extradition and the conditions that must be fulfilled by the requesting country are regulated in articles 22-24 of Law No.1 of 1997.

Extradition requests will only be considered, if they meet the following conditions:

⁶ Anwar, K. (2011) *Hukum Internasional II*. Bandar Lampung: Universitas Lampung.

⁷ Peter Mahmud Marzuki (2005) *Penelitian Hukum*. Jakarta: Kencana.

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- (1) A request for extradition must be submitted in writing through diplomatic channels to the Minister of Justice of the Republic of Indonesia to be forwarded to the President.
- (2) A request for extradition for a person whose extradition is requested to serve a sentence must be accompanied by:
 - a. The original sheet or an authentic copy of the Court's decision in the form of a transfer that already has definite legal force;
 - b. Information required to establish the identity and nationality of the person whose extradition is requested;
 - c. The original or authentic copy of the arrest warrant issued by the competent authority of the requesting country.
- (3) A request for extradition for a person suspected of committing a crime must be accompanied by:
 - a. The original or authentic copy of the arrest warrant issued by the competent authority of the requesting country;
 - b. A description of the crime for which extradition is requested, stating the time and place of the crime being committed, accompanied by the necessary written evidence;
 - c. The text of the legal provisions of the requesting country which are violated or if this is not possible, the content of the applicable law;
 - d. Statements of witnesses under oath regarding their knowledge of the crimes committed;
 - e. Information required to establish the identity and nationality of the person whose extradition is requested;
 - f. Request for confiscation of evidence, if any and required.

If according to the consideration of the Minister of Justice of the Republic of Indonesia the submitted documents do not meet the above requirements or other conditions stipulated in the agreement, then the officials of the requesting country are given the opportunity to complete the documents, within a period of time deemed sufficient by the Minister of Justice of the Republic of Indonesia. After the requirements and documents have been fulfilled, the Minister of Justice of the Republic of Indonesia shall send a letter of request for extradition along with its attachments to the Chief of Police of the Republic of Indonesia and the Attorney General of the Republic of Indonesia for examination.

SUBMISSION OF PEOPLE REQUESTED FOR EXTRADITION

If the request for extradition is approved, the person requested for extradition is immediately handed over to the official concerned from the requesting country, at a place and time determined by the Minister of Justice of the Republic of Indonesia. If the person whose extradition is requested is not taken on the specified date, then he can be released after 15 (fifteen) days have passed and in any case he must be released after 30 (thirty) days have passed.

Subsequent extradition requests for the same crime, after the 30 (thirty) days have elapsed, may be rejected by the President. If the situation is beyond the capacity of the two countries, both the requesting country to take the person and the country requested to hand over the person concerned, the said country is obliged to notify the other country and the two countries will jointly decide on another date for the said collection or delivery.

B. Important matters in extradition treaties between Indonesia and other countries

The signing of the extradition agreement on April 28, 2007 at the Tampak Siring Palace, Bali, is a new chapter to open relations between Indonesia and other countries after a long and dynamic process of more than 30 years. both parties and in line with the national legal framework. This extradition is essentially one of the implementations of the International Anti-Corruption Convention (UNCAC) which Indonesia has ratified, while Singapore has just signed but has not ratified it.

The RI-Singapore extradition treaty is essentially an agreement in which each party agrees to extradite to the other party, wherein any person found in the territory of the Party is requested and sought by the requesting party for the purpose of prosecution (which means investigation) or the implementation of punishment for a crime which may be extradited acts within the jurisdiction of the Requesting Party.⁸

The points that are very important in this agreement are:

- The types of crimes that can be extradited are crimes that carry a penalty of at least 2 years and meet the criteria of "double criminality" (crimes recognized by the laws of both countries). There are 30 types of crimes that meet these criteria. (list of types of crimes is attached). -
- From a number of extradited criminal acts, including economic crimes, namely corruption, bribery, counterfeiting money, banking crimes (acquisition of credit or property through fraud against banks), violations of company law, bankruptcy and money laundering resulting from corruption. -
- Apart from the 30 types of crimes, this agreement also adheres to a limited "open system". This means that the thirty-one lists are not closed in nature and allow for the addition of a new list of crimes, particularly new types of crimes.

⁸ Peter Mahmud Marzuki (2005) Penelitian Hukum. Jakarta: Kencana.

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- Both parties agree not to question the difference in the qualifications of the crime or the elements of the crime as long as the overall nature of the crime is recognized by the laws of the two countries. -
- This treaty is retroactive and may include extraditable crimes 15 years before this treaty enters into force after the ratification process is carried out by the parliaments of both countries.
- This agreement can reach the perpetrators of the crimes of the two countries who fled from the jurisdiction of the two countries. In this regard, it is agreed that the determination of the nationality of the perpetrator of a crime is determined at the time the crime is committed.

The treaty stipulates that the requested state can refuse the request, if the fugitive is a national of its own country. However, this does not apply to crimes of terrorism and bribery and other crimes related to corruption. In certain circumstances (urgent cases), temporary arrests can be made at the request of the requesting country as long as there is sufficient evidence to arrest the wanted fugitive.

CRIMES THAT CAN BE EXTRADICTED

Extradition shall be granted for an extraditable offense which is an offense which is included in the following list of offenses and which is punishable under the laws of both Parties with a penalty of imprisonment of not less than 24 months, or a heavier penalty:

- (i) murder;
- (ii) take the life of another person or because of his negligence causes another person to die;
- (iii) a crime that violates the provisions on abortion;
- (iv) intentionally injuring or causing serious injury;
- (v) Persecution;
- (vi) rape;
- (vii) having sexual intercourse with a woman against the law.
- (viii) criminal acts of decency;
- (ix) the purchase, or trafficking of women or children for immoral purposes;
- (x) kidnapping, abducting persons or depriving persons of liberty, or engaging in slavery;
- (xi) the abduction, neglect, exploitation or unlawful detention of a child;
- (xii) bribery and other acts of corruption;
- (xiii) burning;
- (xiv) criminal acts related to currency counterfeiting;
- (xv) crime against the law related to counterfeiting;
- (xvi) theft, embezzlement, fraud related to conversion, fraud related to falsification of books, acquisition of property or credit through fraud, receipt of stolen property or other crimes related to property through fraud,
- (xvii) robbery;
- (xviii)) extortion or blackmail using threats or by abuse of power;
- (xix) criminal acts that violate bankruptcy law and company law;
- (xx) intentionally damage property;
- (xxi) an act committed with the intention of endangering a vehicle, ship or aircraft, including the people in it;
- (xxii) criminal acts that violate the laws on psychotropics, dangerous drugs or narcotics.
- (xxiii) Piracy
- (xxiv) rebellion against the authority of the captain of the ship or the captain of the pilot of the aircraft;
- (xxv) piracy and other acts that endanger the safety of aircraft and actions that endanger the safety of international airports;
- (xxvi) criminal acts of financing terrorism;
- (xxvii) piracy of ships, destruction or destruction of ships, other acts that endanger or can endanger the safety of navigation and criminal acts related to threats to do these things;
- (xxviii) criminal acts that violate the law relating to profits derived from corruption, illicit drug trafficking and other serious crimes;
- (xxix) perjury or perjury under oath or conspiring to impede the proceedings;
- (xxx) theft by weight or similar crime;
- (xxxi) other offenses which may be extradited by the extradition laws of the two Parties and the laws that ratify the obligations under international conventions to which both parties are parties.

In the relationship between Indonesia and other countries, we are certainly no stranger to the issue of the Extradition Agreement between the two countries. The issue is a topic that often heats up relations between the two neighboring countries.

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The extradition agreement between the two countries is indeed an urgent need for one party, especially the Indonesian government. Many perpetrators of crimes from Indonesia fled to other countries, including perpetrators of corruption. They fled to other countries other than because of their proximity, also because there has been no realization or implementation of an extradition treaty, so that they can walk freely, without fear of threats from the law in that country, to return them to their country of origin, because they have been caught in a legal case in that country. own country of origin.

In fact, the extradition treaty between Indonesia and other countries has been sought and greatly fought for by the Indonesian government, so that it will soon become a reality and be properly realized.

The desire to make extradition treaties between Indonesia and other countries has been highly desired by the Indonesian government since the 1970s, when Indonesia pioneered extradition treaties with several neighboring countries, including the Philippines, Malaysia, Thailand, Australia, Hong Kong, and South Korea. Meanwhile, the government of other countries did not respond on the grounds of differences in the legal system. According to other countries, extradition treaties are difficult to implement. Other countries have shown a change in attitude since late 2004. In a bilateral meeting between the two heads of state from other countries and Indonesia in Tampak Siring, Bali on October 4, 2005, a mutual understanding emerged that the negotiation process for an extradition treaty and a new cooperation agreement in the defense sector would be carried out. in parallel.

After going through a long and dynamic negotiation process for more than 30 years, on April 27, 2007 in Tampak Siring, Bali, Indonesia and other countries have agreed on a defense cooperation agreement. The agreement was signed as a package with an extradition treaty. The signing of the agreement is a new chapter to open relations between Indonesia and other countries. Previously, other countries only entered into extradition treaties with British Commonwealth countries and interacted with allied countries. The extradition treaty of Indonesia and other countries is a positive signal given by other countries to Indonesia.

Defense cooperation between Indonesia and other countries (Defence Cooperation Agreement) is a form of bargaining power or bargaining power of Indonesia's diplomacy in establishing bilateral cooperative relations with other countries. Bargaining power used by Indonesia in approving cooperation in defense and extradition agreements is the idea that DCA will be able to become an effective tool to pressure other countries to implement extradition agreements, where other countries are obliged to pursue and extradite suspects of corruption crimes who fled Indonesia and went to Other countries. As a consequence, Indonesia will grant permission to other countries to use the territory of the Unitary State of the Republic of Indonesia (NKRI) for military training of the soldiers of other countries.

Indonesia and other countries have agreed on the DCA agreement which was signed in a package with an extradition treaty. However, since it was signed until now, there have been pros and cons. These pro and con conditions have made Indonesia and other countries squeezed by a very serious dilemma. The criticism directed at the contents of the agreement was not only at the socialization process. One of them is about several areas that have been agreed to be used as military training sites. Regarding this, several parties argue that the determination of Indonesia's territory as a joint military training site is a violation of the sovereignty of the Republic of Indonesia.⁹

The emergence of the Pros and Cons of the Extradition Agreement that is in the same package with DCA, also interferes with the realization of extradition agreements between Indonesia and other countries. Other countries show an uncooperative attitude towards the realization of an extradition treaty, if the extradition agreement is not in the same package with DCA, while according to many circles the Extradition Agreement that is in agreement with DCA will be detrimental to Indonesia.¹⁰

Extradition agreements between Indonesia and other countries are still apparent in the clarity of regulations and the implementation or implementation of extradition agreements. Until now, there are still many perpetrators of crimes that are included in the points of the extradition treaty regulations, who have fled to other countries but the governments of other countries have not handed over the perpetrators of these crimes to Indonesia according to the extradition agreement. other countries are used as a stopover for perpetrators of crimes in Indonesia to hide and escape because it is so easy for the perpetrators to be free from legal snares because there are no legal rules that can ensnare them in these other countries. The issue of corruption is only one of the points of the agreement, the rest about 30 points contain other issues. Other issues that are regulated include money laundering, white-collar crime, and so on. Although the contents of the extradition agreement that will be signed by the Indonesian government and other countries are not yet clear, the public's hope is still there for the return of the corruptors and their assets to the country. However, until now this has not been implemented because this agreement will be paralyzed if the 2003 UN international convention on anti-corruption is not ratified by other countries. By ratifying this convention, it is guaranteed that other countries will no longer be able to seek to detain the assets of corruptors from Indonesia. This

⁹ Starke, J. G. (1989) Pengantar Hukum Internasional. Jakarta: Sinar Grafika.

¹⁰ Widyawati, A. (2014) Pengantar Hukum Pidana. Jakarta: Sinar Grafika.

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convention states that a country that has committed to dealing with the difficulties experienced by other countries since Indonesia banned the export of land sand last January-following the ban on the export of sea sand some time before. Strict policies and supervision by the Indonesian security forces on the smuggling of sand to other countries also influence the decision of other countries to ratify the decision of the UN international convention on anti-corruption. Other countries really need sand from Indonesia for territorial expansion and reclamation in their country, but since the entry of sand from Indonesia has stopped, other countries have experienced problems in their efforts to expand their territory. Because of this,

Extradition agreements between Indonesia and other countries are considered to be very necessary for both parties to resolve various cases of transnational crimes. For Indonesia, the signing of the extradition agreement is expected to be able to repatriate corruptors from Indonesia who roam freely in other countries and recover assets resulting from corruption. Not only corruption cases, but also other types of crimes, it is hoped that they can be charged with the regulations resulting from the extradition treaty which was signed in 2007. Meanwhile, other countries have the advantage that other countries will get permission to carry out military training in Indonesia, because of the extradition treaty between Indonesia and Indonesia. other countries agree with the DCA (Defence Cooperation Agreement).¹¹

CONCLUSIONS AND SUGGESTIONS

According to the description above, extradition is part of the implementation of Indonesian law and constitution which promises justice and equality before the law and is an obligation for a country to carry out justice and not allow criminals in their country. Which is an obligation for every State to enter into an extradition treaty with another State. For the sake of upholding justice to create an international civil society that upholds law and truth. Instead of only being concerned with profit and profit from international corruptors and criminals, which in the end will only bring problems in the future.

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¹¹ Sunarso, S. (2009) Ekstradisi Dan Bantuan Timbal Balik Dalam Masalah Pidana Instrumen Penegakan Hukum Pidana Internasional. Jakarta: Rineka Cipta.