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Analysis Of International Law on Extradition Treaties Between Countries In Indonesia: A Juridical Review

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Abstract

Interstate extradition treaties are a key instrument in addressing these complexities, although diplomatic challenges often influence their decisions. This research aims to examine and understand the international legal perspective on interstate extradition treaties in Indonesia. This research uses a normative juridical method and a qualitative descriptive approach to explore international legal perspectives on extradition. Legal materials are collected through literature study and analyzed qualitatively to reach an in-depth conclusion regarding this phenomenon. An analysis of international law regarding interstate extradition treaties in Indonesia shows that extradition is an important mechanism for law enforcement involving international cooperation, governed by bilateral or multilateral treaties and principles of international law. Indonesia, through Law No. 1/1979, regulates extradition processes that require specific treaties, while also considering aspects such as human rights and state sovereignty in extradition requests. In addition, Indonesia also regulates extradition by formal treaties with various countries as well as through national legislation, which includes important principles such as reciprocity, non-extradition for political crimes, and the obligation to refuse extradition of citizens.

Keywords: Extradition, International Law, Interstate

INTRODUCTION

Transnational crime is increasingly prevalent in today's globalized world, marked by rapid advancements in technology and information (Rahmaini & Zahid, 2020). Criminals have, in part, fueled this increase by taking advantage of easier cross-border travel to evade justice (Folami & Naylor, 2017). Offenders often flee to other countries rather than face charges in their own,

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making efforts to bring perpetrators to justice challenging (Aji & Hosnah, 2024). These transnational crimes encompass serious offenses, including fraud, human trafficking, drug smuggling, and murder. Such offenses present significant obstacles for law enforcement agencies tasked with prosecuting offenders across jurisdictional boundaries. Therefore, extradition treaties between countries serve as crucial instruments in resolving this complexity, as they establish a framework for legally transferring offenders across jurisdictions to face charges (Kalu, 2024; Boister, 2018).

Controversies surrounding extradition have particularly intensified in cases involving high-profile individuals or former government officials. The diplomatic and legal complexities of extradition requests often come under media scrutiny, especially in cases involving well-known figures. Decisions to approve or deny extradition requests often extend beyond legal considerations, encompassing political, diplomatic, and international legal factors. For example, an extradition decision can strain bilateral relations if perceived as politically motivated or unjust. Thus, it is crucial for law enforcement and diplomatic efforts to carefully manage these dynamics, ensuring legal obligations align with international relations (Antai et al., 2024).

L. Oppenheim, an international law scholar, defines extradition as the transfer of individuals accused or convicted of a crime from one country to another requesting state, according to the alleged offense (Oppenheim, 1960). J.G. Starke further observed that extradition can be conducted through formal treaties or reciprocal agreements between the involved countries (Starke, 2017). This definition underscores that extradition depends on the nature of international relations and legal frameworks. The process relies on a mutual commitment from countries to cooperate on cross-border legal matters, alongside the existence of treaties.

The case of Samadikun Hartono, extradited from China to Indonesia in 2016, is a significant example of the extradition process. The alleged crimes committed by Hartono, causing substantial financial losses to the Indonesian government through misuse of funds, garnered substantial public attention (detiknews.com, 2016). Another illustrative case is the extradition of General Manuel Noriega, a Panamanian leader first extradited to the United States and later to France. The complexities of extradition are exemplified by Noriega's case, which often necessitates lengthy procedural resolution and consideration of multiple legal systems (Antaranews, 2011). These cases highlight the importance of transparent legal processes and robust extradition treaties in effectively managing transnational crime (Mardiyati, 2024).

Nevertheless, the implementation of extradition treaties remains challenging despite their critical function. Many countries require formal extradition agreements before transferring

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offenders. For example, Indonesia and Singapore lack an extradition treaty, even though both are geographically close and share concerns regarding criminal activities. This situation reveals a substantial gap in regional law enforcement, hindering Indonesia's efforts to repatriate offenders who have fled to Singapore. The absence of a treaty creates vulnerabilities in the international justice system, requiring diplomatic efforts to establish a stronger framework for cooperation.

The principle of sovereignty is also a factor in extradition legal processes. The legal status of individuals within a country can be affected by recognized criminal legacies within that nation, which in turn influences how the justice system handles offenders from other jurisdictions. External legal interventions within national borders are often limited by sovereignty, creating unique challenges for requesting countries when dealing with foreign offenders. This underscores the importance of understanding the rights and obligations of states in the extradition process, as requesting states must respect the legal frameworks and policies of host nations while asserting their legal interests (Riths & Martin, 2017).

Given the complexities associated with extradition, this study aims to examine and understand the international legal perspective on extradition treaties while offering insights to improve international law in this area. This research seeks to provide valuable knowledge to policymakers and law enforcement agencies with a focus on practical applications, challenges, and international legal standards related to extradition. Ultimately, the study aims to enhance understanding of the extradition process, its role in combating transnational crime, and the diplomatic and legal barriers encountered globally.

RESEARCH METHOD

This study employs a normative juridical approach with a qualitative descriptive research type. Normative juridical research aims to understand and conceptualize law as prevailing norms and regulations, as well as to identify the positive laws within a country. In this context, literature serves as secondary data, including official documents, literature, and legislation. This research not only focuses on legal texts but also considers the social effects of the formation of legal norms, providing a broader perspective on understanding law within society.

The sources of legal materials in this study are grouped into three categories: primary, secondary, and tertiary legal materials. Primary legal materials include binding laws and regulations, specifically Indonesia's Law No. 1 of 1979 on Extradition. Secondary legal materials consist of expert writings or analyses, while tertiary materials include more general sources such as encyclopedias and the internet. This approach enables the researcher to gather comprehensive

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and relevant information to analyze the legal issues under study.

The technique for collecting legal materials is conducted through literature review, using libraries as the main resource. After gathering legal materials, the next step is identifying and categorizing them according to their relevance. Legal material analysis is performed qualitatively by linking relevant legal theories and correlating them with applicable regulations. The analysis results are then presented descriptively, systematically, and logically to reach accurate conclusions. Through this method, the study aims to provide an in-depth understanding of existing legal phenomena and solutions to the issues discussed.

DISCUSSION

Definition of Extradition and Its Development

Extradition is a legal mechanism of increasing global importance, governed by various international treaties and national regulations. On December 14, 1990, the United Nations issued Resolution No. 45/117 on the Model Treaty on Extradition, which, although a model, serves as a guideline for countries in crafting extradition agreements. Most countries now recognize and accept extradition principles, and even countries without formal extradition agreements often agree to extradite criminals based on prevailing international customary law (Rizal, 2024). Extradition has roots in ancient practices, such as the treaty between Pharaoh Ramses II and King Hattusili II in 1279 BC, and its modern concept emerged in the 17th century. Generally, extradition refers to the transfer of an offender from one country to another for trial, based on an extradition agreement or the principle of reciprocity (Damayanti, 2019; Waryenti, 2022).

Black's Law Dictionary defines extradition as "The official surrender of an alleged by one state or nation to another having jurisdiction over the crime charge" (Eze, 2021). Remmelink describes extradition as the transfer of a suspect, accused, or convicted individual by the state where they are located to the state that requests it (Hardiago, 2024). Meanwhile, international extradition is a government or state request made to another country. Key elements of extradition include the following (Angkasari, 2014):

1. Subject: the requested country and the requesting country;
2. Object: the person requested, often a suspect, accused, or convicted individual (fugitive offender);
3. Procedure: must follow specific procedural or formal requirements;
4. Purpose: for trial and/or sentencing.

Legal Basis for Extradition Requests

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Extradition of criminals from one country to another generally requires a specific extradition treaty; without such a treaty, the requested country is not obligated to surrender the offender. Countries often enter bilateral treaties, while some prefer multilateral treaties, as seen in Latin America and Western Europe. Although organizations like the United Nations have not yet established a universal extradition treaty, voluntary extradition is trending despite not being part of formal international law (Rembet, 2022). Certain countries, such as Canada, India, and Japan, agree to extradite offenders without a treaty, while others, like Indonesia, consider voluntary surrender only for serious crimes.

The legal basis for extradition requests between countries is founded on four principles (Rembet, 2022):

1. National legislation: By the 19th century, many countries had enacted extradition laws, influenced by either the desire to protect individual liberty or the view that all criminal law and procedure must be based on national law.
2. Bilateral treaties: Countries often establish extradition treaties and later seek to standardize procedures through bilateral or multilateral agreements to ease the application of extradition principles.
3. Extension of international conventions: Extradition may be based on expanding a specific convention, such as the 1921 Convention on the Suppression of Trafficking in Women and Children, allowing extradition if other extradition-specific rules are not in place.
4. International etiquette: When not regulated by treaty or convention, extradition can occur based on mutual understanding, termed “Disguised Extradition,” where a criminal’s transfer may not fully follow the formal extradition process.
5. Declaration of Reciprocity: Reciprocity entails that the requesting country guarantees it will reciprocate in similar circumstances.

Principles of Extradition

Extradition is a critical aspect of international criminal law. Currently, the legal dimension of extradition is essential for prosecuting criminals fleeing from one country to another (Katjong, 2017). No single country can address extradition independently, as it involves the jurisdiction of other countries. In enforcing international criminal law, sometimes the criminal is not within the territory of the prosecuting state but is in another country. In such cases, extradition becomes inevitable, and specific extradition laws are typically codified within each nation. Some extradition principles are explicitly stated in national or treaty law, while others are unwritten. There are ten

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primary principles of extradition (Wahid, 2023):

1. Principle of Trust: Extradition can occur only if there is trust between countries, particularly concerning the fairness of the other country's legal system.
2. Principle of Reciprocity: Extradition involves a mutual obligation to ensure fair treatment from other countries.
3. Double Incrimination Principle: Extradition typically requires a specific treaty, without which there is no obligation to extradite.
4. Non-extradition of Nationals: The requested country has the right to refuse the extradition of its own citizens.
5. Territorial Jurisdiction Principle: The requested country may refuse extradition if the crime occurred entirely or partially within its territory.
6. Non-extradition of Political Crimes: The requested country may refuse extradition for political offenses.
7. Attentat Clause: Even if an offense is political, extradition is required if it involves the assassination or attempted assassination of a head of state.
8. Principle of Specialty: The requesting country cannot prosecute or extradite the individual to a third country without consent from the requested country.
9. Ne Bis in Idem Principle: The requested country must refuse extradition if the person has already been tried and sentenced for the same offense.
10. Statute of Limitations: Extradition must be refused if the offense has exceeded the statute of limitations in both countries.

Extraditable Crimes

Crimes eligible for extradition are typically listed within an extradition treaty. The involved parties in the treaty generally agree that an extraditable crime must be recognized as a punishable offense under the laws of both countries involved. This is applicable even if the crime's name differs between the requesting country and the requested country. Eligible crimes are generally punishable by a minimum prison sentence or deprivation of liberty of at least one or two years. Some examples include crimes related to taxation, customs, exchange controls, income matters, and more. There are two methods to designate extraditable crimes:

1. Enumerative Method: This involves listing each crime that qualifies for extradition individually. Examples of such crimes include murder, manslaughter, rape, indecent assault, kidnapping, child abduction, extortion, perjury, arson, violent robbery,

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embezzlement, fraud, counterfeiting, forgery, bribery, bankruptcy offenses, prostitution-related crimes, among others. Indonesia, the Philippines, Hong Kong, and Australia also use this method by listing the extraditable crimes.

2. Eliminative Method: This method classifies crimes based on certain criteria, such as the severity of the punishment, to determine which crimes qualify for extradition, taking into account the maximum or minimum sentences.

Indonesia's Extradition Treaties

Indonesia regulates extradition through Law No. 1 of 1979, which provides the legal framework for agreements with foreign countries and for surrender without a formal treaty. Since 1974, Indonesia has signed extradition treaties with several countries, including Malaysia, South Korea, and Australia. These treaties require ratification by both countries to be enacted. According to Article 11, paragraph (2) of the 1945 Constitution, international agreements with far-reaching impacts and those requiring changes to laws must have parliamentary approval, further regulated under Articles 9 and 10 of Law No. 24 of 2000 on International Treaties. Article 9 states that:

1. International treaties require ratification by the Government of Indonesia when stipulated by the treaty itself.
2. Ratification is carried out by law or presidential decree.

Furthermore, Article 10 specifies that treaties are ratified through legislation if they concern:

a. political matters, peace, national defense, and security;
b. territorial changes or border determination of the Republic of Indonesia;
c. state sovereignty or sovereign rights;
d. human rights and environmental issues;
e. the formation of new legal norms;
f. foreign loans and/or grants.

Considering that extradition deals with state sovereignty and human rights, written legal authorization in the form of legislation is needed to formalize agreements between Indonesia and requesting states for extradition purposes. This is outlined in Article 1, clause 3 of Law No. 37 of 1999 on Foreign Relations, defining International Agreements as those written by the Indonesian government with one or more countries, international organizations, or other international legal entities, and binding the Indonesian government with public legal rights and obligations.

International agreements serve as a foundation for cooperative relations between nations, regulate various activities, and handle dispute resolution between countries. As a result, no nation

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is without treaties with other countries, whether bilateral or multilateral. Indonesia has engaged in international cooperation, including extradition treaties, to achieve its national objectives. The implementation of extradition must adhere to specific principles to ensure effective operation, which are outlined in Law No. 1 of 1979 on extradition, including:

1. Article 2 of Law No. 1 of 1979 affirms Indonesia's willingness to extradite or surrender individuals involved in crimes when there is an existing extradition treaty with the requesting country. This applies to treaties made before or after this law was enacted. Additionally, Indonesia is open to extradition based on goodwill or reciprocity with other countries.
2. Article 4, paragraph (1) of Law No. 1 of 1979 specifies that extradition applies to crimes listed in the attached crime catalog, which forms an integral part of this law. These include premeditated murder and murder conspiracy, rape, kidnapping (including child abduction), unlawful detention, crimes against women and girls, theft with violence or damage, forgery, embezzlement and fraud, bribery, corruption, smuggling, hijacking at sea, drug-related crimes, among others.
3. Article 5, paragraph (1) of Law No. 1 of 1979 states that extradition does not apply to political crimes. The reason is that political offenders are granted the right to political asylum. Given the broad interpretation of political crimes, paragraph (2) restricts this to crimes that are essentially common crimes rather than political in nature.
4. Article 7, paragraph (1) of Law No. 1 of 1979 notes that extradition requests for Indonesian citizens may be denied. This allows the individual to be tried in their own country, protecting national interests. Nevertheless, the individual could be tried in the requesting country based on reciprocity if it benefits the country, justice, or the law.
5. Article 8 of Law No. 1 of 1979 states that extradition may be denied if it is deemed preferable for the individual to be tried in the location where the crime occurred, following the territorial principle.
6. Article 9 of Law No. 1 of 1979 provides that an extradition request may be rejected if the person requested is already being prosecuted in Indonesia for the same crime.
7. Individuals are not to be surrendered if the right to prosecute or enforce a criminal verdict has expired due to the statute of limitations.
8. The extradited person cannot face legal proceedings or punishment in the requesting country for a crime committed before their surrender unless it is the offense for which extradition was granted.

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By adhering to these principles, Indonesia aims to ensure that its extradition agreements are effective and legally compliant (Lathif, 2020). Indonesia currently has extradition treaties with several countries, legislated as follows:

a. With Malaysia, regulated under Law No. 9 of 1974;
b. With the Philippines, regulated under Law No. 10 of 1976;
c. With Thailand, regulated under Law No. 2 of 1978;
d. With Australia, regulated under Law No. 8 of 1994;
e. With South Korea, regulated under Law No. 42 of 2007;
f. With India, regulated under Law No. 13 of 2014;
g. With Vietnam, regulated under Law No. 5 of 2015;
h. With Papua New Guinea, regulated under Law No. 6 of 2015;
i. With China, regulated under Law No. 13 of 2017;
j. With the United Arab Emirates, regulated under Law No. 1 of 2019.

An extradition agreement with Singapore was signed on April 27, 2007, in Bali's Tampak Siring Palace, alongside a defense cooperation agreement. However, if an agreement is not ratified by both countries, it is not considered legally binding and cannot be enforced. One factor preventing Indonesia from agreeing to this extradition treaty was Singapore's condition permitting both countries to use each other's facilities and territories for military training.

Indonesia-Singapore Extradition Policy (2008-2012)

The extradition agreement between Indonesia and Singapore has long been a priority for Indonesia, especially to strengthen efforts to combat corruption. Indonesia frequently faces obstacles in repatriating fugitives involved in corruption cases who find refuge in Singapore, a nation known as a global financial hub with policies that allow free movement of capital. This situation is particularly problematic because several high-profile Indonesian fugitives, especially from the Bank Indonesia Liquidity Assistance (BLBI) case, are known to have assets stored in Singapore, making it a safe haven beyond Indonesia's legal reach. Negotiations over this agreement have been protracted and complex since the 1970s, with various challenges arising, including differences in legal systems and national interests. Finally, in 2007, the two nations succeeded in signing the Extradition Treaty and the Defence Cooperation Agreement (DCA). Through the DCA, Indonesia agreed to grant Singapore military training access to certain areas, a reciprocal arrangement meant to encourage Singapore to comply with the extradition agreement. However, signing this treaty sparked both support and opposition, particularly concerning

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sovereignty and national interests.

The extradition treaty offers significant positive impacts for Indonesia, especially in recovering state assets embezzled by corrupt individuals. Once implemented, Indonesia hopes this treaty will restrict safe havens for fugitives and allow for legal proceedings to take place. Meanwhile, as a small country with a financial center reputation, Singapore is cautious in executing this treaty to maintain its financial system's stability. Although the treaty faces challenges, particularly in implementation, it represents a positive step in enhancing bilateral relations. This extradition treaty also paves the way for closer cooperation between the two countries, particularly within ASEAN. Productive and harmonious collaboration between Indonesia and Singapore benefits regional stability and boosts international confidence in both countries' commitment to addressing transnational crime. While this agreement does not guarantee a challenge-free execution, it reflects Indonesia’s serious diplomatic effort to strengthen the rule of law and tackle long-standing corruption that disrupts national stability and the economy.

CONCLUSION

This study emphasizes the importance of developing extradition agreements in international law, using Indonesia as a primary case study. Extradition is a crucial element in international criminal law to ensure that cross-border criminals can be fairly prosecuted, regardless of their geographic location. From a legal perspective, extradition requires not only a robust treaty framework but also sufficient diplomatic engagement to apply extradition principles like reciprocity and non-extradition for political crimes. This study shows the necessity of bilateral and multilateral agreements, particularly for countries with strong sovereignty interests and differing legal interpretations.

The implications of this research for developing international law highlight the importance of establishing more comprehensive and adaptable extradition agreements, particularly for transnational crimes like corruption. Based on the analysis, it is recommended that the Indonesian government intensify parliamentary involvement in the ratification process and consider more integrated enforcement mechanisms. Additionally, this research suggests steps toward building stronger international support to resolve differing interpretations of the principle of non-extradition for nationals, which often becomes an obstacle, ensuring that cross-border criminal prosecution is conducted more effectively and consistently.

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