

**LEGALITY OF THE EXTRADITION TREATY BETWEEN NATIONS
ENGAGING COOPERATION IN RELATION WITH CRIME
PREVENTION**

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Abstract

International agreements can serve as the basis for determining the basis of cooperation between countries, one of the cooperation between the government of the Republic of Indonesia and other countries in the fight against transnational crime is the extradition treaty. The number of criminals who have fled abroad or otherwise make Indonesia held an extradition treaty with several countries. Issues raised is about setting Extradition treaty as well as the legality of the extradition treaty that made Indonesia against countries that do the same job and if the Indonesian state has not made an extradition treaty with that country are preventing the offender. Agreement is said to be valid when both countries approved the agreement by ratifying the agreement in the form of Law. Therefore, the International Agreement in the field of extradition is critical in the implementation of extradition requests, because through the extradition treaty is essentially required that the submission of the perpetrators of criminal acts based on the agreement made between the countries requesting and state required under Article 27 of the Vienna Convention requires that a request for extradition must be met,

Keywords : Legality, Extradition Treaties

Preliminary

Basically every country bound jurisdiction over all persons in its territory, it gives the consequent emergence of a right for the state to impose the law for each actor acts of crime. But the realization of these rights often have difficulty because the perpetrators have fled to other countries (Adolf, 1996).

Talking about a legality, then one of them in this case the International Agreement. The international agreements are agreements concluded between the members of the community of nations and aims to lead to a certain result (Koesumaadmadja, 1999). International agreements can be used as a basis to

determine the basis of cooperation between countries, set a variety of activities and regulate the issue of settlement of disputes that occur in antaranegara. Therefore, no country in the world that do not have agreements with other countries, both agreements are bilateral and multilateral. This was done by the Republic of Indonesia to achieve the objectives of the state.

Sovereign state has jurisdiction exclusively within their own territory called sovereignty (territorial sovereignty). State has jurisdiction solely to punish those who commit crimes in violation of the law who are in the territory of the country. However this is often not possible because the perpetrators crime offenders have escaped (fugitive) to the jurisdiction of other countries. In this case the state can not perform actions that are sovereign in the territory of another country.

This situation is encouraging decision-makers to carry out international cooperation for the common interest in upholding order and justice. In overcoming these obstacles then comes the cooperation agreement contained in the agreements between countries that cooperate in reducing transnational crime called Extradition Treaty.

Extradition treaty was born with the aim to anticipate, apprehend and prosecute criminals who tried to escape to other countries, in order to avoid entrapment laws of the country where he (the perpetrator) commits a crime, kenegara which he is a safe place to hide.

Extradition or surrender the perpetrators of the requesting country to the state requested, many obstacles or problems or can not be done because there is no extradition AGREEMENTS. Many countries, especially European countries, in accordance with national legislation, extradition can be done if the country requesting and requested country does have an extradition treaty because it has the territorial jurisdiction of each. In general, extradition laws contain procedures or ordinances, requirements and process requests for extradition. In the law also determine whether the extradition of the perpetrators of crimes may be made to the requesting country without an extradition treaty with the requesting country. This is in accordance with one of the sounds on the rules of the Extradition Article Indonesia, namely in Article 2 of Law No.

Cooperation between countries is needed to facilitate the handling of the investigation, prosecution and examination before the court on an issue that arises both in the State of the Requesting and the Requested State. Cooperation in the field of law and criminal justice, permasalahannya is accordant with jurisdiction over the person who is in the process of applying the criminal law (from stage to investigate, the manufacture of the minutes of the examination, the trial or execution of sentence) for crimes dilakukn by someone in some aspects linked to the jurisdiction of another country.

The obstacles in this extradition is if the perpetrators of these crimes bemotifkan politics which can cause difficulty in catching and tackling because in terms of the Extradition known principle of "non-extradition of Politics Criminal" as such countries are required to reject the demand of the country requesting to hand over the requested if the crime committed by the person who requested it and that became the basis for the handover request by the requesting state is a political crime (Damian, 1991)

Results And Discussion

Extradition arrangements Through the International Treaty

In a world which is marked today's interdependence, no country in this world that do not have agreements with other countries and no country that is not governed by the International Treaty in international life. For example, Indonesia as an active member of the international community has become a party to various international agreements, and till now it has become a party to approximately two thousand one hundred bilateral agreements and multilateral agreements (Mauna, 2005).

Based on the general principle of international law each country has the highest power or sovereignty over the people and objects that exist within its own territory. Therefore, a country must not take action that is sovereign (act of sovereignty) in the territory of another state, except with the consent of the state itself. For such action was seen as an intervention (suppression) or interference in the domestic matters of other countries, which are prohibited under international law. Approval of the intended called the extradition treaty.

In the Vienna Convention on International Treaties (UN Convention on the law of the treaty) in 1969 based on the practice of international relations, first, by Article 26 of the general principles of the agreement *pacta sunt servanda*, Article 26, a state may not refuse execution of an agreement with reason is contrary with the national legal system, second, Article 27 of the extradition request must be fulfilled, as an absolute obligation for the requested state, see the 1969 Vienna Convention on the law of Treaties. Even on December 14, 1990, United Nations General Assembly has issued Resolution No. 45/117 on the model Treaty on extradition, which although in the form of a model law only, so it is not a positive law, but can be used as a model by countries in making treaties on extradition. Following the issuance of Resolution No. 45/117 on the model Treaty on extradition, on December 14, 1990 by the United Nations General Assembly and on concerns of countries in the world will be the threat of organized crime then in 2000, which became effective in 2002 in Article 16 regulates extradition :

- a. This Article shall apply to the offenses covered by this Convention or in cases where an offense referred to in Article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of a request for extradition is housed in the territory of the defendant Member State. Provided that where extradition is sought crime punishable under the domestic law of the Member States and the applicant Member State Respondent (principle of double crime).
- b. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested Member States may also apply this lesson in the evils of the past.
- c. Each of the crimes in this article applies, shall be considered as an extraditable crime treaties (agreements) extradition exist then between Member States works to include crimes such as an extraditable crime in any treaties (agreements) extradition to be held between them.
- d. If the Member State which makes extradition dependent on the existence of treaties (agreements) receives a request for extradition from another Member State where he does not have treaties (agreements) extradition, he may consider this Convention as the legal basis (legal basis) for extradition in respect of an offense in article this is true.
- e. Member States which make extradition dependent on the existence of a treaty (agreement) will be:
- f. At the time of deposit of its instrument of ratification, acceptance or approval or inclusion of this Convention, notify the Secretary General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other Member States to this Convention, and
- g. If they do not take this Convention as the legal basis for cooperation on extradition, seek appropriate agreement on extradition with other Member States to this Convention to implement this Article.
- h. Member countries which do not make extradition treaty depends on the existence of a treaty (agreement) will recognize the evils which this article applies as extraditable crime among themselves.
- i. Extradition will be affected by the conditions set by the domestic law Member State defendant or by treaties (agreements) applicable extradition, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the basis for the possible use Member States defendant to refuse extradition.
- j. Member State (depending on the laws in their country), will attempt to expedite extradition procedures and to simplify evidentiary

requirements relating to the respect of an offense under this chapter applies.

- k. Subject to the provisions of its internal law and Treaty (treaty) extradition, the Member States of the Respondent, after making sure that the circumstances so definite and urgent and at the request of Member States of the applicant, sought to bring someone who was extradited residing in its territory into custody, or take other measures in place to ensure his presence at extradition case.
- l. Member State in whose territory the offender is found, if it does not extradite him in respect of such crimes on the grounds that he is a national, shall transfer the case immediately to the authorities affiliated to do the investigation at the request of Member States to seek extradition. Then the officer will make a decision and carry out the trial in accordance with the law of that Member State. Member States concerned will work together mainly on procedural and evidentiary to ensure the efficiency of the prosecution.
- m. In certain conditions, Member States may be allowed by law in the country to extradite or submit other way one of its nationals only under the provisions of (the condition) that it will be returned to the Member State to serve a sentence imposed as a result of the actions to be tried where extradition or the delivery was carried out and that the Member States are seeking extradition of the person agree with this option and other terms they may deem appropriate.
- n. If extradition is sought for the purposes of enforcement of penalties refused because the person sought is a national of the requested Member State (in accordance with the applicable laws of the requested Member State) will take into consideration the enforcement of penalties already imposed Based in domestic law the applicant Member State.
- o. Someone who was tried under the provisions of this article shall be guaranteed fair treatment at all stages of investigation, including obtaining the rights and guarantees provided by the domestic law of the Member States in the area where the person is.
- p. There is no obligation under this article is for the Member States the defendant to extradite a person if it has confidence and a strong basis that the request for extradition is made for the purpose of prosecution on the basis of sex, race, religion, nationality, origin, ethnicity or political opinion, or that compliance on request it causes harm to that person for that reason.

- q. Member States may refuse a request for extradition solely on the basis that the offense is a fiscal crime including deemed related to fiscal issues.
- r. Before refusing extradition, the requested Member State, and with good reason, will consult with the applicant Member State to provide leeway to present views to provide relevant information about the accusation
- s. Member States will look to agreements or drafts of bilateral or multilateral to implement or enhance the effectiveness of extradition.

But such an agreement is certainly not a stand-alone esktradisi agreement as well as we know it today mi. But about esktradisi this is just one small part of the whole matter of the agreement. Usually this agreement is a peace agreement to establish friendly relations between the parties or a peace treaty to end the war.

Carried legality Indonesia Extradition Treaty With Other Countries

Indonesia has set up legislation on extradition set forth in Act No. 1 of 1979 on Extradition. This law is intended to provide a legal basis for the conclusion of treaties with foreign countries and to submit to someone without their agreement. Indonesia itself has long made an agreement extradition by several countries from 1974 to the present, among others: Extradition treaty with Malaysia, Republic of Korea, the Republic of India, the Agreement on extradition with the Republic of socialist Vietnam, Papua New Guinea, the People's Republic of China, the United Arab Emirates, Kingdom of Thailand, Republic of the Philippines, Australia, the Republic of Singapore, the Islamic Republic of Iran, and Hong Kong.

After their talks such cooperation agreements are not automatically applicable. It is associated with the implementation requirements, namely the obligation to ratification by both countries. Liabilities ratified by both countries are usually stated in terms of agreement. Implementation of such ratification is part of the commitment of the Government of the Republic of Indonesia has signed agreements of cooperation with the country.

Pursuant to Article 11 paragraph (2) Constitution NRI 1945 stated that the President in making other international agreements, arising from extensive and fundamental to the lives of the people in relation to state financial burden, and / or require changes or creation of laws subject to the approval of the Board representatives. NRI provisions in the Constitution of 1945 further regulated by the provisions of Article 9 and Article 10 of Law No. 24 of 2000 on International Agreements.

Article 9 of Law Number 24 Year 2000 on the International Treaty states that:

- 1) Ratification of international treaties by the Government of the Republic of Indonesia conducted sepanjangdipersyaratkan by the treaty.
- 2) Ratification of international agreements as referred to in paragraph (1) by law or presidential decree.

Further in Article 10 of Law No. 24 of 2000 on the International Treaty states that:

Ratification of a treaty through legislation if international agreement referred to in respect of:

- a. Political, peace, defense, and security of the state;
- b. Changes or delimitation of the territory of the Republic of Indonesia; c. sovereignty or sovereign rights;
- c. Human rights and the environment;
- d. Establishment of new legal rules;
- e. Loans and / or grants.

Given the implementation of extradition in respect of state sovereignty and human rights, to the need for legality / legislation in the form of written rules as a determination has been the establishment of an agreement between Indonesia and countries wanting an extradition treaty. This is regulated in Article 1 paragraph 3 of Law No. 37 of 1999 on Foreign Relations which states that the International Covenant is an agreement in the form and terms of any kind, which is governed by international law and concluded in writing by the Government of the Republic of Indonesia with one or more countries , international organizations or other subjects of international law, as well as the rights and obligations on the Government of the Republic of Indonesia which is public law.

Keep in mind in conducting an extradition treaty should pay attention to some of the principles / principles that can later be implemented well, it is stipulated in Law No. 1 of 1979 on extradition, among others:

Article 2 of Law No. 1 of 1979

Reaffirming Indonesia's willingness to extradite or surrender upon oneself the perpetrators, if between Indonesia and the requesting country is already bound by an extradition treaty. This agreement either before or after the extradition treaty of enactment of this Act. However, in addition on the basis of an agreement, Indonesia has also expressed willingness to extradite on the basis of a good relationship with the parties or other countries. This is better known on the principle of reciprocity principle or the principle of reciprocity (Pathiana, 1990).

Article 4 paragraph (1) of Law No. 1 of 1979

Explaining that the Extradition crimes committed against them in the list of crimes is attached as an integral text of the Act ini.jenis of crime in question is Murder plans and plots to murder, Rape, Kidnapping including

child abduction, robbery of personal freedom in against the law, crimes committed against women and girls, Theft by destruction and violence, forgery, embezzlement and fraud, and all criminal offenses relating to the bribery and corruption, smuggling and evasion, piracy at sea, crime narcotics and crime -kejahatan concerned with dangerous drugs and others.

Article 5 (1) of Law No. 1 of 1979

Extradition is not carried out against political crimes. Not handed someone a political offender is in connection with the right of states to give asylum to political refugees. Because the notion of political crime that is too large, then there is a restriction such as that referred to in paragraph (2), which are crimes that there are substantially more an ordinary crime rather than political crimes, is not considered a political crime.

Article 7 paragraph (1) of Law No. 1 of 1979

Requests for extradition of the citizens of the Republic of Indonesia was rejected. Which means it is the best interests of the protection of its own citizens, it is considered better if the person concerned was tried in his own country. Nevertheless, there is a possibility that the person will be better judged in another country (in the requesting countries) given the considerations in the interest of the state, law and justice. The submission is based on the implementation of the principle of reciprocity (reciprocity).

Article 8 of Law No. 1 of 1979

The extradition request may be refused if the offense alleged in the above can be done if the person concerned because the state would be better prosecuted in the commission of these crimes. From the wording of the article states an offender would be better judged in place of the crime scene. It also leads to a territorial principle in which the question of the "scene of the offense" (Sudarto, 1990)

Article 9 of Law No. 1 of 1979

Eksradisi request may be refused if the person sought is being processed in the Republic of Indonesia for the same crime. Someone was not submitted because the right to sue or the right to carry out criminal decisions has expired

With regard to the principle / principle, it is expected the agreement made Indonesia the country cooperation can be implemented properly and effectively in accordance with the principles of the existing law. Until now, Indonesia has made an extradition treaty with some countries already enacted, among others:

- a. Extradition treaty with Malaysia stipulated in Law No. 9 1974
- b. Extradition treaty with the Republic of the Philippines is regulated in Law No. 10 of 1976

- c. extradition treaty with the Kingdom of Thailand stipulated in Law No. 2 1978
- d. Extradition treaty with Australia is regulated in Law No. 8 1994
- e. Extradition treaty with the Republic of Korea stipulated in Law No. 42 Year 2007
- f. extradition treaty with the Republic of India stipulated in Law No. 13 of 2014
- g. Extradition treaty with the socialist Republic of Vietnam as stipulated in Law No. 5 2015
- h. extradition treaty with Papua New Guinea stipulated in Law No. 6 2015
- i. Extradition treaty with the People's Republic of China stipulated in Law No. 13 Year 2017
- j. Extradition treaty with the Union of arab emirates regulated in Law No. 1 of 2019

Conclusion

Agreement is said to be valid when both countries approved the agreement by ratifying the agreement in the form of Law. Where should pay attention to some principle / principle in making an agreement that stipulated in Law No. 1 in 1979. If the country of Indonesia has not made the extradition treaty with that country are preventing criminal, Indonesia can do on the basis of a good relationship and if the interests of the State Republic of Indonesia wills. Therefore, international agreements in the field of extradition is critical in the implementation of extradition requests, because through the extradition treaty is essentially required that the submission of the perpetrators based on the agreement made between the requesting state and the requested state. Article.

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Ganesha Law Review

Volume 2 Issue 1, May 2020

Supplement to the American Journal of International Law, Vol. 29, 1985. Law
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