

## Analysis of the Application of Extradition Law for Perpetrators of Corruption in Indonesia

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ARTICLE INFO	ABSTRACT
<p><b>Keywords:</b> Application of Law, Extradition, Offender, Crime, Corruption.</p>	<p><i>The rapid advancement of technology has facilitated international interactions, including travel for business, tourism, and other purposes. However, this ease of movement also enables individuals involved in criminal activities, such as corruption, to evade justice by fleeing abroad. This study aims to analyze the application of extradition law for Indonesian corruption offenders who escape overseas. Utilizing a normative juridical approach, the research collects data from books, journals, legislation, and websites, and analyzes media reports on corruption cases and applicable Indonesian laws. The findings indicate that Indonesia has implemented extradition treaties to address corruption cases, allowing for the arrest and return of offenders hiding in other countries to face trial in Indonesia. Notable cases requiring extradition include Djoko Tjandra, Nazaruddin, and Nunun Nurbaeti. The legal framework for extradition is governed by Law Number 1 of 1979 on Extradition, further detailed by regulations such as the Attorney General's Regulation Number 06 of 2018 and the Minister of Foreign Affairs' Regulation Number 13 of 2020. The study concludes that while extradition treaties are crucial for law enforcement, their effectiveness depends on international cooperation and robust legal frameworks. The implications highlight the need for enhanced extradition processes, stronger international collaboration, and improved legal mechanisms to combat transnational corruption and ensure that offenders are held accountable.</i></p>

### INTRODUCTION

The development of technology today is undeniably very rapidly growing, and is comprehensive almost everywhere in the world. Indonesia is no exception as one of the users of advanced technology which considers that current technology as a support in its interaction with various countries in the hemisphere. With the increasingly sophisticated technology today certainly brings significant progress to a country because it can interact with other countries even without meeting directly. Advanced technology is anticipated to positively influence numerous sectors, such as the economy, law, education, tourism, culture, defense, security, and more. Even with the technological advances that are developing today, it will make it easier for other people to travel to various countries, whether in the form of business, tourism, religious or other trips. (Gunawan Nachrawi, 2020). However, with the convenience obtained due to the form of technological sophistication, of course, it does not only have a positive impact, but can have a negative impact, for example, someone easily travels abroad on business, tourism, religion or other forms of business. The problem is if this convenience provides an opportunity for someone who is involved in criminal matters, one of which is a corruption case, which usually leaves a trail by traveling abroad to avoid the applicable law in his country.

Some cases that have been handled by law enforcement authorities where the perpetrators or corruptors have fled abroad to avoid the law in Indonesia, the author refers to, among others: the Djoko Tjandra case fled and hid abroad from 2009-2020, and was finally discovered to be hiding in Malaysia. Nazaruddin, the former General Treasurer of the Democratic Party, became a suspect in the alleged bribery case for the construction of the Sea

Games Athlete's House in Palembang. Nunun, the wife of former Deputy Police Chief Adang Darajatun, is a suspect in a case of alleged bribery in the 2004 election for Senior Deputy Governor of Bank Indonesia won by Miranda Goeltom. In addition, ICW noted that since 2001 there have been 43 other people who have also fled abroad. (Natalia, 2011). Estimates of state losses reach trillions and even millions of US dollars, and the perpetrators are still many in number with various corruption cases that ensnare them. Even until 2023, there are still many more perpetrators caught in corruption cases in Indonesia, but have been identified by the KPK and prohibited from traveling abroad.

In enforcing the law against perpetrators of corruption in Indonesia who escape and hide in other countries to avoid the law in Indonesia, of course, it must be done with an extradition mechanism. The extradition mechanism is a law enforcer to eradicate perpetrators who escape and hide in various countries. (Adiwijaya, 2019). Although there have been several successful settlements by extradition, not all of them have succeeded in enforcing the law against corruptors by extradition, that "In the context of international criminal law, the transfer of criminals from one country to another does not have to be based on an extradition treaty made between two countries." (Damayanti, 2019). (Damayanti, 2019). However, it is more based on the principle of trust between the two countries (*omnia praesumuntur rite esse acta*). In reality, in the practice of extradition, the Government of Indonesia has failed to negotiate with the destination countries of the corruptors, in order to extradite the corruptors for trial. Corruptors who flee abroad seem untouched by the law. Law enforcement officials seem helpless" (Costa, 2017).

Agreed with Darmono who said: "Corruption is no longer a national problem, but has become a transnational crime phenomenon. Based on this, international cooperation is essential in preventing and eradicating corruption crimes and eradicating the escape of corruptors abroad. The extradition treaty is a legal institution that is considered ideal in overcoming crimes classified as transnational crimes. (Rachmat, 2017). In this case, the role and existence of law enforcement agencies should continue to be encouraged and spurred so that they can work effectively and be able to carry out their duties, functions and authorities, especially in handling corruption crimes. Synergy and good coordination built by all levels of law enforcement institutions and with related agencies to fight corruption is a solution that is expected to significantly reduce the rate of increase in corruption in Indonesia, considering that corruption is a systemic and complex crime that cannot be dealt with partially, but requires joint handling." (Darmono, 2012). So that extradition agreements can be carried out in accordance with mutual agreements between countries that make these agreements. Furthermore, Romli Atmasasmita states that international crime can be interpreted as a form of criminal offense that is considered to be detrimental to the entire international community, where every judicial institution in each country, including international courts, has jurisdiction or authority to examine and try the perpetrators. (Atmasasmita, 2000). So, the conclusion is that the existence of the extradition treaty can actually benefit the parties to the agreement, where each country has the authority to examine and try the perpetrators of crimes that have harmed the country, it is not impossible if the behavior is carried over to the destination country of the perpetrator, because this crime is considered detrimental to the entire international community.

Based on the above background, the purpose of this study is to analyze the application of extradition law for corruption offenders in Indonesia who flee abroad. This research aims to provide insights into how international cooperation and legal frameworks can be strengthened to ensure that perpetrators of corruption are brought to justice. The benefits of this research are to provide recommendations to improve the extradition process, enhance legal and diplomatic strategies, and encourage international collaboration to effectively combat transnational corruption. This research is expected to contribute to better law enforcement practices and the development of policies that prevent and deal with corruption more efficiently.

## **METHOD**

This research design uses a normative approach, namely by analyzing problems through the approach of legal principles contained in statutory regulations. This approach emphasizes the study of applicable legal norms and relevant legal principles, in order to understand and interpret the legal issues faced (Saputra & Widiensyah, 2022). The legal materials used in this research consist of secondary, primary and tertiary data in the form of guidelines and explanations regarding primary and secondary legal materials (Gibson et al., 2005). In addition, recent cases reported in the mass media were also included in this research. The inclusion of these cases aims to provide real and actual context for the legal issues being analyzed.

## **RESULTS AND DISCUSSION**

### **Extradition**

In the General Provisions of Law Number 1 Year 1979 on Extradition, Article 1 states: "Extradition is the surrender by a state to a requesting state of a person suspected or convicted of committing a crime outside the territory of the surrendering state and within the jurisdiction of the territory of the requesting state, as it is authorized to try and punish him." Article 2, paragraphs 1 and 2, state that extradition is conducted based on a treaty, and in the absence of such a treaty as mentioned in paragraph (1), extradition can be carried out on the basis of good relations and if the interests of the Republic of Indonesia require it. So that the extradition in question even without a treaty can be carried out, but with the condition that extradition can be carried out on the basis of good heeparagraph (1) states: "Those who may be extradited are persons who are requested by the competent authority of a foreign country because they are suspected of committing a crime or to serve a sentence or detention order." Paragraph (2) states: "Extradition may also be made to a person who is suspected of committing or has been convicted of aiding, attempting and conspiring to commit the crime referred to in paragraph (1), provided that such aiding, attempting and conspiring are punishable under the laws of the Republic of Indonesia and under the laws of the country requesting extradition". Thus, extradition can be carried out by the competent authority of a foreign country against the perpetrator of a crime because a person is suspected of committing a crime or to serve a sentence or detention order from his home country and extradition can be carried out against a person who is suspected of having committed or has been convicted of aiding, attempting and conspiring to commit the crime, as long as the aiding, attempting and conspiring to commit the crime.

Extradition is not carried out against political crimes, but extradition is carried out against crimes listed in the list of crimes and attached as an integral part of the Law. (Megawati, 2019). However, for certain types of political crimes, the perpetrators can also be extradited as long as it is agreed between the Republic of Indonesia and the country concerned. For example, the crime of murder or attempted murder of the head of state or members of his family is not considered a political crime. (Siregar, 2019). So that in this case extradition can be requested. Extradition of crimes under military criminal law that are not crimes under general criminal law is not carried out unless a treaty provides otherwise (Karinda, 2021). (Karinda, 2021). So that the application of extradition can be carried out as long as it concerns general criminal crimes, but related to crimes according to military criminal law can be carried out in accordance with what has been promised.

Not all extradition treaties have to be accepted, but there are also rejections from the destination country, for several reasons:

1. If the alleged criminal act was committed wholly or partly within the territory of the Unitary State of the Republic of Indonesia, and the person concerned is being processed in Indonesia for the same criminal act, then extradition cannot be carried out.
2. If the decision of the competent court in the Republic of Indonesia regarding the criminal offense for which extradition is requested has legal force, then extradition cannot be carried out.
3. Extradition cannot be carried out if the person sought has been tried and acquitted or has completed his or her sentence in another country for the same crime.
4. If according to the law of the Republic of Indonesia, the right to try or enforce a criminal decision has expired, then extradition cannot be carried out.
5. If the criminal offense for which extradition is requested is punishable by the death penalty according to the law of the requesting country, but according to the law of the Republic of Indonesia the criminal offense is not punishable by the death penalty or the death penalty is not always carried out, then extradition can still be considered if the requesting country provides sufficient guarantees that the punishment death will not be implemented.
6. If the authorities suspect that the person whose extradition is requested will be prosecuted, punished, or subject to other measures for reasons related to religion, political beliefs, nationality, or because he or she comes from a particular tribe or population group, then extradition cannot be carried out.
7. The person whose extradition is requested may not be prosecuted, convicted, or detained for a crime other than the crime for which extradition is requested, except with the permission of the President.
8. Extradition cannot be carried out if the person whose extradition is sought will be handed over to a third country for other crimes committed before extradition is attempted.
9. Eligible extradition requests may be postponed if the person requested is under investigation or trial, or is serving a sentence for another crime committed in Indonesia.

The conclusion is that extradition treaties are not always possible, sometimes there are rejections as described above. The conditions of detention proposed by the requesting state in the extradition treaty, namely:

1. The Chief of the Indonesian National Police or the Attorney General of the Republic of Indonesia has the authority to order the detention of an individual requested by another state based on urgent reasons, provided that such detention does not violate the laws of Indonesia. In such requests, the requesting state must confirm the availability of the documents mentioned in Article 22 and commit to submitting an extradition request within the timeframe specified in Article 21.
2. Requests for detention must be formally made by an authorized official of the requesting state to the Chief of the Indonesian National Police or the Attorney General of the Republic of Indonesia, either through INTERPOL Indonesia, diplomatic channels, or directly via post or telegram. The issuance of an arrest or detention warrant must comply with the procedures outlined in Indonesian Criminal Procedure Law, unless otherwise specified in paragraph (3). Notwithstanding the provisions of the Indonesian Criminal Procedure Code, individuals accused of extraditable offenses under this law may be detained.
3. Decisions regarding detention requests are communicated to the requesting state by the Chief of the Indonesian National Police or the Attorney General of the Republic of Indonesia through INTERPOL Indonesia, diplomatic channels, or directly via post or telegram.
4. If the individual in question is detained, they must be released by the Attorney General of the Republic of Indonesia or the Chief of the Indonesian National Police if, within a reasonable period from the date of detention, the President, acting through the Minister of Justice of the Republic of Indonesia, does not receive an extradition request along with the documents specified in Article 22 from the requesting country.

#### **Application of Extradition Law for Corruption Offenders in Indonesia**

Law No. 31/1999 in conjunction with Law No. 20/2001 on the Eradication of the Crime of Corruption contains provisions relating to property associated with corruption crimes, involving both individuals and corporations. Article 28 of Law No. 31/1999 in conjunction with Law No. 20/2001 stipulates that for the purpose of investigation, the suspect is required to provide information about all of their property as well as the property of their spouse, children, and any person or corporation known or suspected to be connected with the corruption crime committed by the suspect. If the examination of the suspect or defendant does not yield sufficient evidence, the bank, upon the request of the investigator, public prosecutor, or judge, must revoke the asset blocking on the same day. This is to anticipate that a perpetrator of a crime may be able to flee abroad as well as the perpetrator of a corruption crime in the hope that he cannot be tried by his home country. It is not that easy for an offender to escape easily, because a country may have made an extradition treaty in advance (Huang & Li, 2024). (Huang & Li, 2024). However, in practice, there are many countries that hand over criminals without an extradition treaty, but with good relations between countries that are being established.

Article 45 of Law Number 1 Year 1979 on Extradition regulates the delivery of the requested person to Indonesia. According to this Article, if the person requested for extradition in Article 44 has been handed over by a foreign country, the person is brought to Indonesia, and handed over to the authorized agency. If Indonesia's position as the requesting state and Indonesia's extradition request is granted by the requested state, then Indonesia will come to take the requested person to the place determined by the requested state. Indonesia as the requesting state has a strong interest in retrieving or punishing the person concerned. The interested party must take and bring the person back to their own country. (Kurniawan, 2021).

In the extradition request mechanism carried out by the Indonesian state as an extradition requesting state, based on the provisions of the law, that the procedure consists of several provisions, namely the position as the requesting state (Requested state) of extradition, the position as the requesting state (Requesting state) of extradition, and law enforcement cooperation (Requested state), based on international treaties (pacta sunt servanda principle), that a state may not refuse the implementation of an agreement on the grounds that it conflicts with the national legal system. (Rembet, 2022). As a requesting state, extradition in practice generally involves the issue of search and arrest requests, usually if the perpetrator of the crime flees outside the country, law enforcement officials (Police / Attorney General's Office) request Interpol assistance to search and arrest, law enforcement cooperation the oldest law enforcement cooperation is extradition. (Angkasari, 2014). Then followed by other law enforcement cooperation. The extradition process in Indonesia's position as the requesting country, namely: request for search as well as arrest and detention; preparation of extradition request requirements, examination of the request by the Minister of Law and Human Rights; examined and sent formally by the Minister of Foreign Affairs to the requested country (for those who have a treaty), sent formally through the NCB-

INTERPOL diplomatic channel of the Requested Country (for those who do not have a treaty); Examination in the court in the Requested Country; Court Decision; channeled to the Minister of Justice in the Requested Country; implementation of Extradition. (Reznik et al., 2019).

If an individual is suspected of committing a crime or is serving a sentence for an extraditable offense within the jurisdiction of Indonesia and is believed to be residing in a foreign country, the Minister of Justice of Indonesia, acting on behalf of the President, can initiate an extradition request through diplomatic channels. This request is made upon the request of the Attorney General of Indonesia or the Chief of Police of Indonesia. Upon surrender by the foreign country, the individual sought under Article 44 shall be transported to Indonesia and delivered to the appropriate authority. Meanwhile, the procedure for requesting the surrender and receiving the surrendered person shall be regulated by Government Regulation. That Indonesia has implemented extradition agreements in several corruption cases in Indonesia. One of them is the extradition agreement between the Government of Indonesia and Malaysia to arrest the fugitive of the Bank Bali case, Joko S Tjandra. Joko Tjandra was sentenced to 2 years in prison in a judicial review (PK) of his case filed by the prosecutor to the Supreme Court in 2009. The day before the verdict, Joko Tjandra fled abroad. More than 10 years later, he submitted a request for a review to the South Jakarta District Court on June 8. Before going to the South Jakarta District Court on the same day, Joko also went to Grogol Selatan Village to take care of an electronic identity card (KTP). After that, Joko also allegedly traveled from Jakarta to Pontianak, West Kalimantan. He used a road letter signed by the Head of the Coordination and Supervision Bureau (Rokorwas) of Civil Servant Investigators (PPNS) of the National Police Criminal Investigation Agency Brigadier General (Pol) Prasetijo Utomo. extradition is needed to repatriate criminals who have fled abroad, including Joko who is suspected of being in Malaysia. Moreover, the Indonesian government has signed an extradition treaty with the Malaysian government in 1974. Joko's alleged presence in Malaysia was conveyed by Joko's attorney, Anita Kolopaking. According to Anita, Joko is at home in Malaysia and has no interest in returning to live in Indonesia, regardless of the outcome of his case review application in court. Joko is also known to have a well-established business in Malaysia. The problem now is the commitment and integrity of law enforcement in trying to arrest Joko. In addition, the Indonesian government must also try to request Joko's extradition from Malaysia to Indonesia. Where, if there is no request, then the Malaysian state has no need and no interest in conducting any legal proceedings against Joko. So it is very necessary to make an extradition treaty with Malaysia. The Attorney General's Office must also request a red notice to Interpol's NCB. This is important to help identify Joko's whereabouts and temporarily detain him for further legal proceedings by Indonesia. At first, Joko's extradition was not easy, and could not just happen even though there was an agreement between the two countries. In fact, there are a number of conditions in the extradition agreement that must be met by both countries, for example there must be dual criminality and reciprocal agreements. In fact, continued Iman, even though the conditions are complete, usually in an extradition treaty there is another clause that whether or not the perpetrator of the crime is handed over is entirely at the discretion of the country concerned. there is a possibility in international law, the state prefers to refuse to carry out its international obligations. In this sense, national interests are considered greater than national obligations. This is because sanctions for violating international obligations usually also depend on how big and how strong a country's bargaining power is. Because of this position, the state chooses not to carry out its international obligations for its national interests.

The next extradition treaty that has been implemented in Indonesia is the extradition between the State of Hong Kong and Indonesia. It is known that the Indonesian Minister of Law and Human Rights represented by the Directorate General of General Legal Administration (Ditjen AHU) through the Directorate of Central Authority and International Law (OPHI) has extradited a French citizen named Mathias Hubert Marie Echene to Hong Kong at the Bali High Prosecutor's Office. Mathias Hubert Marie Echene is a suspect in the crime of property management in Bali named Pantai Lima and Soka which has caused a loss of 4.278 million US dollars. Mathias is suspected by law enforcement in Hong Kong of violating Section 25 (1) and (3) of the Organized and Serious Crimes Ordinance Chapter 455 of the Laws of Hong Kong. The extradition of Mathias is the first moment for the Indonesian government since the extradition treaty between Hong Kong and Indonesia entered into force. The extradition request was submitted based on the Agreement between the Government of the Republic of Indonesia and the Government of Hong Kong for the Surrender of Lawbreakers Fleeing to Indonesia. The extradition request from the Hong Kong Government in the agreement requires the fulfillment of the principle of dual criminality where the crime alleged against Mathias is committing a criminal offense related to the management of property known or believed to represent proceeds of indictable offenses. That in Article 378 of the Indonesian Criminal Code (KUHP) in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code, Article 3, Article 4, Article 5

and Article 10 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering. Regarding the extradition process, it must go through Presidential Decree (Kepres) Number 20 of 2019 dated July 26, 2019 which grants the extradition request for Mathias. The extradition was carried out at the Bali High Prosecutor's Office with the Director of OPHI as a representative of the Indonesian Government and witnessed by ministries / agencies related to extradition handling and representatives of the Hong Kong Government. Based on the Red Notice on September 16, 2014 with reference to the arrest and detention order dated October 10, 2014 issued by the District Court of the State of Hong Kong, on July 31, 2017 the National Police arrested and detained Mathias.

The conclusion is that Indonesia has implemented the extradition treaty related to corruption cases committed by perpetrators of corruption in Indonesia. Extradition treaties are indispensable in law enforcement against perpetrators of corruption in Indonesia. So that with a request for extradition of the perpetrator of corruption who has fled and is hiding in the destination country, arrest and detention can be carried out by the country, and submission is requested to the country where the crime was committed by the perpetrator to be punished in accordance with the applicable laws in the country where the perpetrator committed the crime.

## CONCLUSION

Indonesia has implemented an extradition treaty related to corruption cases committed by perpetrators of corruption in Indonesia. Extradition treaties are indispensable in law enforcement against perpetrators of corruption in Indonesia. So that with a request for extradition of the perpetrator of corruption who has fled and is hiding in the destination country, arrest and detention can be carried out by the country, and submission is requested to the country where the crime was committed by the perpetrator to be punished in accordance with the applicable laws in the country where the perpetrator committed the crime. Some corruption cases where the perpetrators have fled and are hiding abroad that have been handled by law enforcers and require extradition agreements in their handling include: Djoko Tjandra's case of Rp 546 billion corruption related to the Bank Bali cessie, Nazaruddin, former General Treasurer of the Democratic Party, became a suspect in the alleged bribery for the construction of the Sea Games Athlete's House in Palembang. Nunun, the wife of former Deputy Police Chief Adang Darajatun, is a suspect in the alleged bribery case in the 2004 election for Senior Deputy Governor of Bank Indonesia won by Miranda Goeltom and various other cases. The extradition regulatory process is regulated in Law Number 1 of 1979 concerning Extradition and a more detailed explanation of the arrangements on extradition requests has been explained and elaborated through regulations, namely the Regulation of the Attorney General of the Republic of Indonesia Number 06 of 2018 concerning Guidelines for Handling Extradition and Regulation of the Minister of Foreign Affairs of the Republic of Indonesia Number 13 of 2020.

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