

Breaking Boundaries: How Indonesia's Limited Territorial Jurisdiction Sparked a Global Movement to Solve Extradition Woes¹

Rompiendo Barreras: Cómo la Jurisdicción Territorial Limitada de Indonesia Desencadenó un Movimiento Global para Resolver los Problemas de Extradición

[Artículos]

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Abstract

This thought-provoking paper explores the intriguing issue of Indonesia's limited geographical jurisdiction concerning extradition treaty implementation. Extradition, the process of returning fugitives to face justice, is frequently impeded by complex legal obstacles stemming from a country's membership in the United Nations and commitment to human rights principles and values. Due to their legal jurisdiction or concerns regarding human rights violations, many nations are not obligated to deliver over suspects, posing a unique difficulty for Indonesia. Nevertheless, there is optimism. International cooperation

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and the development of extradition agreements can serve as a road map for nations seeking to enhance their extradition practices. Countries can negotiate multilateral or regional agreements that satisfy the concerns and interests of all parties by comprehending the complexities of the extradition process, such as the list of extraditable offences and customary international law. Our paper suggests that nations investigate legal models and extradition treaties that offer viable solutions for overcoming these obstacles. By collaborating and sharing information, we can surmount obstacles to justice and ensure that fugitives face the consequences of their actions, regardless of where they hide.

Keywords: extradition, Indonesia's limited territorial jurisdiction, extradition treaty

Resumen

Este artículo que induce a la reflexión explora el intrigante problema de la jurisdicción geográfica limitada de Indonesia en relación con la implementación de tratados de extradición. La extradición, el proceso de devolver a los fugitivos para que enfrenten la justicia, se dificulta con frecuencia debido a unos obstáculos legales complejos derivados de la membresía de un país a las Naciones Unidas y su compromiso con los principios y valores de los derechos humanos. Debido a su jurisdicción legal o a las preocupaciones sobre las violaciones de los derechos humanos, muchas naciones no están obligadas a entregar a los sospechosos, lo que representa una dificultad única para Indonesia. Pero no todo está perdido. La cooperación internacional y el desarrollo de acuerdos de extradición pueden servir como una hoja de ruta para las naciones que buscan mejorar sus prácticas de extradición. Los países pueden negociar acuerdos multilaterales o regionales que satisfagan las preocupaciones e intereses de todas las partes mediante la comprensión de las complejidades del proceso de extradición, como la lista de delitos extraditables y el derecho internacional consuetudinario. El presente trabajo sugiere que las naciones investiguen modelos legales y tratados de extradición que ofrezcan soluciones viables para superar estos obstáculos. Al colaborar e intercambiar información, podemos superar las barreras de acceso a la justicia y garantizar que los fugitivos enfrenten las consecuencias de sus acciones, independientemente de dónde se escondan.

Palabras clave: extradición, jurisdicción territorial limitada de Indonesia, tratado de extradición.

Introduction

Crime is not constrained by means, time, or national borders, and its growing pace cannot be hindered. At that point, the complexity of the crime or criminal act increases. It is not uncommon for fugitives to flee from one country to another to escape punishment. This causes the need for every country to work together to combat transnational criminal activities.

A country under certain conditions faces a problem dealing with criminal acts, especially related to the territory, because sovereign countries have exclusive jurisdiction in their respective territories (often known as territorial sovereignty). The exclusive jurisdiction of the state is limited to that area, so criminals leaving the area (going to another exclusive jurisdiction) trigger the loss of exclusive jurisdiction that the state has. Under these conditions, a sovereign state cannot immediately arrest criminals in the exclusive jurisdiction of another country; this cannot be done without making bilateral or multilateral agreements related to the application of criminal jurisdiction (Agusman, 2010).

Combating crimes, especially those with cross-border domains will be very difficult because of state jurisdiction limitations. Extradition is the most viable solution to overcome the limitations of territorial jurisdiction in the criminal justice system. Countries depend on each other and the international community to enter into extradition treaties (Mannheim, 1935). The country where the suspect is located will have the option of continuing the suspect's trial under the national law of that country or extraditing the suspect to his home country (van der Wilt, 2018). But sometimes, it is impossible for the country where the suspect hides to prosecute or punish him due to a lack of jurisdiction. Another obstacle is the absence of an agreement between the countries involved, complicating the extradition process.

Transboundary crime is an imminent threat that will affect the state and the international community (Stigall, 2013). These actions involve one country and become a problem for other countries; some crimes are committed and organised by those operating within the country's borders, for example, drug trafficking, human trafficking, cybercrime, and terrorism. In a broader scope, extradition treaties are intended to prevent criminals from running away from punishment or the judicial process by moving to other countries. However, for reasons of protection of human rights, as well as political and even economic reasons, the full right of the requested state to grant or not grant an extradition request becomes a real obstacle to extradition, even though several countries have acted on the principle of *aut punere but dedere*.

Even if two countries already have an extradition treaty, its implementation will not be easy, e.g., Indonesia's rejection of Australia's extradition request for Sayed Abbas. In contrast, Indonesia succeeded in repatriating Maria Pauline Lumowa from Serbia even though the two countries do not have an extradition treaty; the same thing happened with the extradition of Muhammad Nazarudin from Colombia (Waryenti, 2014)

The concept of extradition is based on the principle of reciprocity between two or more countries (Suryokusumo, 2010) to hold a fair trial for the alleged perpetrators (Acharya, 2014). According to legal terminology, extradition can be interpreted as an act of reinstatement of a criminal who fled from one country to another, preceded by an

agreement between the two countries (Jafari Langroodi, 1998). It is in the hands of the countries concerned whether to grant or refuse the extradition request, which depends on the recognition of the jurisdiction of each country.

Extradition attempts to reconcile the conflicting legal geographies of a sovereign state's power to criminalise and punish, usually when a person suspected of or convicted of a crime in one jurisdiction flees to another (Mann et al., 2018). The United Nations General Assembly (UNGA) has passed Resolution 45/117 on the Model Treaty on Extradition, an example of making an extradition treaty. The United Nations Convention Against Corruption (UNCAC) and the United Nations Convention Against Transnational Organized Crime (UNTOC) also serve as legal frameworks for extradition.

An in-depth study of the substance and scope of the extradition process is still needed because basic knowledge states that extradition is only a process of 'moving' fugitives. Understanding the state of bilateral relations between two countries and how each country handles requests for extradition can be an indication because extradition can reflect the intensity and continuity of political relations between the two countries. In practice, extradition cases often have technical and operational constraints but are also vulnerable to political interests.

Research Methods

This paper applies a normative legal research methodology to examine the issue of limited territorial jurisdiction and its relationship with extradition laws, focusing on Indonesia. The study begins with a comprehensive literature review of relevant case law, national law, and international legal frameworks. This literature review serves as the basis for analysing the issue of limited territorial jurisdiction and the emergence of extradition laws, particularly in Indonesia.

The first part of the paper will discuss the concept of limited territorial jurisdiction and its implications for the administration of justice. Territorial jurisdiction refers to a state's power to exercise authority over a particular geographical area and its inhabitants. Territorial jurisdiction is important in extradition because it determines how much a state can exercise its authority over individuals outside its borders.

In light of this, the first part of the paper will examine the history of extradition laws and their evolution over time. The study will draw correlations between the development of extradition laws and the issue of limited territorial jurisdiction. It will explore how territorial jurisdiction has impacted extradition and examine the various international legal frameworks established to regulate extradition.

The second part of the paper will evaluate the practice of Indonesian extradition laws with partner countries through case examples. This evaluation will examine the obstacles in the extradition process and the efforts made to overcome these challenges. The study will focus on the Indonesian experience, but it will also compare it to the extradition practices of other countries to provide a comprehensive overview of the issue.

One of the main obstacles to the effective implementation of extradition laws is the need for more political will on the part of some countries. For instance, some countries may be reluctant to deport individuals who are considered politically sensitive or who may face a risk of persecution if returned to their home country. This can lead to lengthy legal proceedings, and in some cases, the individual may never be deported.

Another obstacle to effectively implementing extradition laws is the complexity of the legal procedures involved. Extradition can be lengthy and involve multiple steps, including gathering evidence, preparing extradition documents, and negotiating treaties with other countries. This can lead to significant delays, making it difficult to promptly bring individuals who have committed crimes to justice.

To overcome these obstacles, the study will recommend several practical solutions. For instance, it may be necessary to establish a dedicated agency or task force within the Indonesian government to coordinate the extradition process and support the relevant authorities. This could include the development of a database of international treaties and agreements related to extradition and providing training and support to the individuals responsible for the extradition process.

Results and Discussion

The Existence of Extradition as a Response to Indonesia's Limited Criminal Jurisdiction

Extradition Dynamics Based on the International Legal Framework

The extradition process existed historically because of an agreement between Ramses II and Hattusili in the 13th century BC. The agreement aimed for the two emperors to work together to deal with enemies from each country who would flee and hide in another country. During the 19th century in Europe, rebel forces against the monarchy would flee and cross national borders to escape punishment (Saul, 2014).

The Montevideo Convention on the Rights and Duties of the State contains clauses that codify the state's declarative theory, which is accepted as part of international practice. Law. Article 1 states that a state as a subject of international law must have a permanent resident, a defined territory, a government, and the ability to establish relations with other countries (Kaczorowska-Ireland, 2010). Almost all countries depend on each other, as

shown through agreements between countries (bilateral or multilateral) regulated in international treaties. Indonesia, which gained its independence in 1945, has obtained the necessary qualifications to become a sovereign state and has rights and obligations as a subject under international law. It has entered into various international agreements, including about two thousand and one hundred bilateral and multilateral agreements.

State jurisdiction is an important matter to be discussed concerning international law; it can be defined as the capacity of a country under international law to establish and enforce the rule of law (Setiyono, 2015). The state's authority to arrest, try, and punish criminal suspects within the state's territory. Problems arise when the perpetrator of the crime is outside the country's borders, where the crime occurred, so criminal jurisdiction can no longer be applied. This has resulted in partnerships between countries forming an extradition treaty so that a country that holds criminal jurisdiction over a suspect can still apply its criminal law even though the suspect is outside the country's territory (Ryngaert, 2008). Extradition also involves the physical transfer of the detention of an extradited person to the legal authority of the requesting jurisdiction (Chhabra, 2014). Other countries will then receive requests from aggrieved countries to hand over the rebels, thereby signalling the need for a legal basis from the Government and courts to decide whether the extradition request is accepted or rejected (Saul, 2014).

Extradition agreements can only be made if they apply universal principles such as double criminality, *ne bis in idem*, non-retroactivity, and the doctrine of specialisation (Suryokusumo, 2010). There are four elements in the extradition treaty: first, the subject consists of two actors, the requesting country, which holds criminal jurisdiction over the suspect and the requesting country, the country where the suspect is located; second, the object is the perpetrator of a crime, whether it is a suspect or a convict, whose position is outside the territory of the requesting country; third, procedural elements; and finally, the purpose, namely, to try and punish the perpetrators of criminal acts. One of the important aspects of bilateral agreements related to eradicating criminal acts is that the mechanism is designed to respect state sovereignty and avoid extraterritorial law enforcement that would weaken other sovereign states (Stigall, 2013). This will be the same aspect covered by the extradition treaty and mutual legal assistance (Lewis, 2007).

In extraordinary circumstances, the extradition procedure may be carried out either by the terms of an extradition treaty or independently of any such agreement. In the second scenario, the extradition is carried out because the countries concerned have positive relations and trust one another completely. An intriguing example of extradition without an extradition treaty is the case of Muhammad Nazaruddin, a former Indonesian government official who fled to Colombia. Nazaruddin is currently being held in Colombia. Despite the

absence of a treaty, Indonesia successfully achieved the extradition of Nazaruddin to Indonesia through diplomatic efforts and maintaining positive relations with Colombia.

In a separate instance, the diplomatic efforts of both countries made the extradition of Maria Pauline Lumowa from Serbia to Indonesia feasible. She was handed over to the Indonesian authorities. Lumowa had been on the run for 17 years and had taken refuge in Serbia. Lumowa was eventually apprehended and extradited to Indonesia thanks to the successful negotiations and collaboration that took place on the diplomatic front between that country and Serbia.

Extradition has hurdles and difficulties concerning human rights, sovereignty, and jurisdictional issues. In some instances, the state being asked to hand over a suspect could be hesitant due to worries about the suspect's human rights and the prospect of the suspect being sentenced to death. In such situations, the state that has been asked to extradite someone must balance its duty to uphold human rights and its obligations under the extradition treaty.

The procedure of extradition is an essential component of the international legal system. It is a mechanism that allows fugitives and criminals to be transferred from one jurisdiction to another to be prosecuted or serve a sentence. Extradition is a legal process that functions as a mechanism. It facilitates international cooperation in combating crime, particularly major offences like terrorism, organized crime, and human trafficking. Additionally, it assists in bringing criminals to justice and ensuring that they are held accountable for the activities that they have undertaken.

However, although it is crucial, the extradition procedure has challenges. There needs to be more uniformity in the laws and procedures of different nations, which can lead to considerable delays and barriers in the extradition process. This lack of consistency is one of the most significant difficulties. Some countries, for instance, may have more stringent requirements for extradition, such as the requirement for dual criminality, which stipulates that the offence for which the person is being extradited must be a crime in both the country that is requesting the extradition and the country that is requesting the individual's extradition.

There is also the problem of political motive, in which an extradition request may be driven by political concerns rather than a genuine desire to bring a criminal to justice. This is another challenge that needs to be overcome. Instead of addressing actual criminal conduct, some nations exploit the extradition procedure to go after political opponents or dissidents. This is one of the many reasons why extradition exists. It can potentially undermine the rule of law and the fairness and integrity of the extradition process.

Despite these obstacles, it is essential to make ongoing developments and improvements to the extradition process to guarantee that it will operate efficiently and advance the cause of justice. The development of new extradition treaties, which can provide a framework for international cooperation that is both broad and standard, is one approach that can be taken to accomplish this goal. These accords can help to ensure that the extradition process is uniform, fair, and unbiased and that fugitives and criminals are brought to justice promptly, which is both efficient and effective.

In addition, it is essential to fortify the existing extradition accords and ensure that they are carried out and enforced correctly. This can require conducting regular reviews and making necessary treaty updates to account for the environment's ever-shifting nature and resolve any potential voids or flaws in the extradition procedure. To ensure that the extradition procedure is performed efficiently and successfully, improved cooperation and coordination between countries may also be necessary.

Revising and strengthening existing extradition accords is essential to significant progress in the battle against worldwide crime and terrorism. Several actions must be taken to ensure their correct implementation and enforcement.

To begin, it is necessary to perform systematic reviews and updates on the treaties to adapt them to the ever-evolving environment. This can comprise changes to the legal system of the nations involved, the appearance of new criminal activities, and the need to resolve any potential holes or flaws in the extradition process. All of these factors can affect the extradition process. For instance, if technological advancements continue, new types of criminal behaviour, such as cybercrime, may come into being. In such situations, it could be necessary to revise the treaties to ensure they can adequately address crimes of this nature.

Second, increasing collaboration and coordination between nations is necessary to guarantee that the extradition procedure is carried out effectively and efficiently. This can involve sharing information and resources and developing coordinated initiatives to improve the extradition process. For instance, governments may coordinate their efforts to compile a centralised database of wanted individuals, making the procedure significantly more manageable.

International cooperation also requires sharing best practices. This can include exchanging the best procedures for capturing and extraditing individuals and processing extradition requests. Sharing knowledge about the best extradition processing processes is also possible. Sharing and learning from other nations' extradition procedures helps improve them.

In addition, it is essential to make sure that there is a well-defined legal framework for extradition. This can require establishing explicit norms and processes for the extradition

process and ensuring that all parties involved are informed of their respective obligations and responsibilities. It can help ensure that the extradition procedure is carried out promptly and effectively and that the rights of all parties concerned are respected during the entire process.

The issue of political will is one of the primary obstacles that must be overcome to execute and enforce extradition treaties successfully. In certain instances, countries may be hesitant to extradite individuals for political reasons or be concerned about the impact of such a move on their relationship with other countries. Both are valid reasons for countries to be reluctant to extradite individuals. In situations like these, it is essential for international organisations and other stakeholders to engage in productive dialogue with the respective governments and to encourage those governments to take the necessary actions to guarantee that the extradition process is completed efficiently.

Lastly, ensuring that the extradition process has access to sufficient support and resources for success is essential. This can involve offering financial and technical aid to nations to help them improve their extradition processes. Additionally, it can include providing training and capacity-building support to the necessary officials and agencies.

The Existence of the Extradition Act in the National Legal Framework The basis

The Extradition Act, implemented in 1979, is Indonesia's primary legal framework for controlling extradition. The law specifies the legal rules and processes for extradition between Indonesia and other nations, regardless of whether Indonesia is being requested or the country making the request. It is generally agreed that the Extradition Act is one of the essential pieces of legislation in Indonesia's legal system since it offers a comprehensive framework for the extradition procedure and is regarded as such.

The Extradition Act, drafted with the treaty between Indonesia and Malaysia serving as a model, stipulates specific rules for how the extradition procedure should be performed. The general principles of extradition are outlined in the law, including the concepts of dual crime and double jeopardy. Individuals who are wanted for major crimes and attempting to evade prosecution by fleeing to another nation cannot do so due to these principles. According to the Extradition Act, the crime that the individual is wanted for must be considered a crime in both the country making the request and in Indonesia. Additionally, the law stipulates that the individual cannot have been previously tried and convicted for the same crime in either country.

In order to comply with the requirements of the Extradition Act, extradition requests must be submitted through diplomatic channels. The task of processing the request and deciding

whether or not the subject in question should be extradited falls under the purview of the central authority that the law has authorised. The central authority is often the Ministry of Foreign Affairs or the Attorney General's Office, and the decision to extradite an individual is based on the seriousness of the offence, the possibility that the accused will flee, and the principle of double jeopardy.

The Extradition Act not only includes explicit instructions for how the extradition process should be carried out, but it also includes standards for how individuals who are the subject of extradition proceedings should be treated. The Extradition Act also allows for the potential of temporary detention if deemed necessary; however, this must be done in compliance with the law and in a manner that respects the individual's rights and dignity.

The Extradition Act in Indonesia is a significant piece of legislation that lays out the guidelines for transferring a criminal offender from one nation to another. This law was passed in 2002. The legislation was drafted to offer a transparent and all-encompassing structure for the extradition procedure, with the overarching goal of preserving the legal standing of all individuals and groups concerned.

Section 1 of the Extradition Act defines "extradition" as the surrender of a criminal by one country to another. The criminal is handed over to the requesting country to allow that nation to bring criminal charges against the offender for a crime committed on its soil. This definition is essential to clearly knowing what constitutes an extradition request. It also lays the groundwork for the extradition procedure and explains how it works.

For a crime to be eligible for consideration, it must have been committed both outside the territory of the nation submitting the extradition request and inside the country requesting it. This condition assures that the country requesting extradition has the right to prosecute or punish the criminal for the crime within its boundaries, and it is the criminal's responsibility to answer to the requesting country.

The Indonesian Extradition Act is predicated on countries collaborating to share information and resources. This indicates that countries need to collaborate to guarantee that the extradition procedure is carried out effectively and efficiently and that the rights of all parties concerned are protected. Any procedure involving the transfer of criminals from one nation to another must be carried out with an approach that is both just and open to public scrutiny. The law allows for the transfer of criminals from one nation to another.

The Extradition Act in Indonesia outlines the processes that must be followed to request extradition and the criteria that must be met to decide whether or not the request should be granted. The law requires the nation requesting the extradition to submit a request to the other country and the requested country to respond to the requesting country. The severity of the offence, the likelihood that the individual will flee, and the principle of double

criminality are some considerations that go into deciding whether to grant the request. Double criminality stipulates that the offence must be recognised as a crime in both the requesting country and the requested country.

There is a provision in the Indonesian extradition statute that allows for judicial review, which is done to ensure that the law is enforced efficiently and fairly. This indicates that the matter may be brought before a court for review if the decision regarding the extradition request is contested. This contributes to ensuring that all parties' rights are safeguarded and that the extradition process is carried out in a manner that is open to public scrutiny and equitable.

In practice, Indonesia has made seven extradition treaties in cooperation with several countries, two of which have not been ratified, as shown in Table 1 below.

Table 1

Bilateral Extradition Agreements

No.	Extradition Treaty	Information
1.	Indonesia - Malaysia Extradition Treaty (1974)	27 types of crime act included Ratified: Law 9/1974
2.	Indonesia – Philippines Extradition Treaty (1976)	17 types of crime act included Ratified: Law 10/1976
3.	Indonesia - Thailand Extradition Treaty (1978)	27 types of crime act included Ratified: Law 2/1978
4.	Indonesia - Hong Kong Extradition Treaty (1997)	44 types of offences included Ratified: Law 1/2001
5.	Indonesia - Australia Extradition Treaty (1992)	33 types of offences included Ratified: Law Number 8/1994
6.	Indonesia - South Korea Extradition Treaty (2000)	Does not specify what kind of offence requires extradition. Only mentions that an individual can be extradited if the crime is punishable by law between the two countries. Has not been ratified by Indonesia's national law
7.	Indonesia – Singapore Extradition Treaty (2007)	Has not been ratified by Indonesia's national law

Source: Based on the analysis conducted by the researcher

Based on the previous table, Indonesia has actively cooperated with several countries to eradicate criminal acts through extradition treaties since 1974. The agreements with the seven countries can be categorised as bilateral agreements because their legal consequences only affect both parties without involving a third party. Every stage of the extradition treaty, starting from negotiation, signing, and ratification, has been completed based on the Vienna Convention on Treaty Law (Sinclair, 1984).

Through the extradition process, the requesting country can have a fair trial and punish the perpetrators of the crime by sending an extradition request to the requested country (Harris, 2004). Upon receiving the request, the requested state may return the offender to the requesting state with criminal jurisdiction over the suspect (Brownlie, 2008). The extradition process in Indonesia is laid out clearly and comprehensively, thanks to the Extradition Act. In this process, multiple ministries and agencies of the Indonesian government are involved. These include the Ministry of Foreign Affairs, the Ministry of Law and Human Rights, the Indonesian National Police, and the Office of the Attorney General. Each organisation plays a crucial part in ensuring that the extradition process is carried out effectively and efficiently.

The extradition request must first be submitted by the country seeking the extradition to the Ministry of Foreign Affairs. This is the initial stage in the extradition procedure. The Ministry of Foreign Affairs will then transmit the request to the Ministry of Law and Human Rights, whose responsibility is to analyse the request and determine whether or not it satisfies the criteria for extradition. If the request is accepted by the Ministry of Law and Human Rights, it is forwarded to the Indonesian National Police, who will execute the arrest warrant and imprison the suspect.

After the suspect has been apprehended, the Attorney General's Office is responsible for investigating the situation, evaluating the evidence, and deciding whether or not the person should be extradited. Some elements that go into making this judgement are the seriousness of the offence, the possibility of the subject fleeing, and the principle of double criminality, which requires that the crime be considered a crime in both the nation requesting extradition and Indonesia.

The President of Indonesia, who is responsible for issuing Presidential Decrees, has the ultimate authority to decide whether or not an individual should be extradited. The Extradition Act allows for the possibility of a temporary arrest to ensure that the extradition procedure is carried out promptly and effectively. Specifically, the law requires that the process be carried out within a reasonable amount of time. This provision, found in

Sections 19 to 21 of the law, enables the suspect to be temporarily detained if an urgent situation arises.

It is essential to guarantee that the Extradition Act is enforced effectively and fairly because the law's scope is restricted by the state's criminal authority against offenders. This helps to guarantee that the extradition process is carried out in a way that is both open and consistent, as the rules and procedures for submitting, rejecting, and accepting extradition requests are clearly stated in the legislation.

Complications of the Implementation of the Extradition Act in Response to Indonesia's Limited Territorial Jurisdiction

Implementation of the Extradition Act in Indonesia

Stigall (2013) states that the national legal frameworks of many countries can be obstacles to carrying out an effective extradition process. However, Indonesia has experienced a different partnership regarding extradition as both a requesting country and a requested country.

As a requested country, Indonesia has repeatedly extradited criminals who have committed crimes in a country and then fled to Indonesian territory, for example, in the case of Hadi Ahmad, an Iranian citizen suspected of being involved in human trafficking by providing illegal income for around 900 Middle Eastern citizens to Australia who transited through Indonesian territory to Australia. For his actions, Hadi Ahmad has been included in Interpol Australia's wanted list since September 7, 2007, by the Court in Australia. Furthermore, when Hadi Ahmad entered Indonesia, he was arrested at Soekarno-Hatta Airport on June 29, 2008, by Polda Metro Jaya. In this regard, the Australian Government has officially submitted a request for extradition to Indonesia. On this request, Indonesia granted Hadi Ahmad's extradition to Australia on May 26, 2009.

Table 2 below shows Indonesia's role as a requesting country.

Table 2

Requests for Extradition by Indonesia

No.	Case Summary	Information
1.	Subagio Lagaida Prabowo is an Indonesian citizen who was the Chairman of a local bank in Salatiga, Central Java. He committed embezzlement, fraud, falsification of letters, and banking crimes, all actions punishable by law under Sections 372, 378, and 263 of Indonesia's Criminal Code. He escaped	The suspect was transferred back to Indonesia in 1996 through an extradition process.

	and went into hiding in Australia. After going through the extradition request process stipulated in the Indonesian extradition treaty with Australia on February 21, 1996, the Sydney Supreme Court decided the suspect fulfilled the requirements to be extradited for the four (4) crimes alleged against him.	
2.	Adhi Suriaputra is an Indonesian citizen and former director of Balisena Artalisindi Corp. in Jakarta. According to the police investigation on November 23, 1998, he was suspected of committing fraud and illegal acts punishable by law under Sections 378 and 374 of Indonesia's Criminal Law. The suspect then fled to Australia, and through the extradition treaty, the Minister of Justice Australia permitted the Supreme Court to hold a hearing and decided to extradite Adhi Suriaputra.	The suspect was transferred back to Indonesia in 2000 through an extradition process.
3.	Adrian Kiki Ariawan is an Indonesian citizen who, together with his peers, has committed corruption of up to 1,9 trillion rupiahs. The group then fled to Australia. Through an <i>in absentia</i> trial, the Court in Central Jakarta, on November 13 2002, decided that the group was guilty under corruption charges and sentenced to life imprisonment. Indonesia has officially proposed to the Australian Government for Adrian Kiki Ariawan to be extradited to Indonesia.	The suspect was arrested in Perth on November 28, 2008, but has not been transferred to Indonesia since then. According to Australian legal procedures, extradition will be decided through a lengthy trial.

Source: Based on the analysis conducted by the researcher

Based on the examples of cases listed in Table 2, it is implied that the extradition of perpetrators of crimes residing in the territory of other countries has been carried out by the procedural mechanism stipulated in the extradition agreement between the two countries so that perpetrators can be extradited from the requested country to the requesting country (Indonesia), which holds criminal jurisdiction to try and punish the perpetrators.

Extradition is a legal matter. However, it cannot be denied that it occupies a broader dimension for economic and political reasons, and even considerations of profit and loss often influence the decision to grant a country's extradition request. Extradition has entered the dimensions of politics and diplomacy between two or more countries. For example, Indonesia's diplomatic efforts to Serbia in the extradition of Maria Pauline Lumowa in 2019–2020.

Maria Pauline Lumowa was a suspect in the burglary of the BNI Kebayoran Baru branch, worth 1.7 trillion rupiahs. The burglary was carried out using Letters of Credit from Dubai Bank Kenya Ltd., Rosban Switzerland, Middle East Bank Kenya Ltd., and The Wall Street

Banking Corp. Before being named a suspect, Maria fled to Singapore and was known to be in the Netherlands in 2010 and 2014. Indonesia attempted to extradite Maria from the Netherlands, although it failed because Maria had changed citizenship to Dutch.

Furthermore, the Netherlands offered a trial in the Netherlands with a Transfer of Proceeding mechanism, which Indonesia rejected. Maria could only be arrested at Nikola Tesla Airport, Serbia, because the Red Notice is still active, and she was successfully extradited to Indonesia through bilateral efforts between the two countries.

After Maria's arrest, the Indonesian Government confirmed her identity, and Serbia gave a deadline of 18+40 days to prepare extradition documents. Since there is no extradition treaty between Indonesia and Serbia, extradition is conducted based on the United Nations Convention Against Corruption (UNCAC), which stipulates that extradition without an agreement is possible by utilising good relations between countries through the principle of reciprocity.

The receipt of Indonesia's request for the extradition of Maria cannot be separated from the fact that Indonesia had approved a similar request by Serbia against Niko Iliev in 2015. Indonesia is still planning for the investigators in the Niko case to align their views, goals, and interests in Maria's extradition. Negotiations on Maria by Indonesia to Serbia continued to form an extradition treaty and the Mutual Legal Assistance Treaty (MLAT). The cases of Indonesia and Serbia show that extradition has another dimension that can be utilised to benefit the two countries, which focuses on establishing reciprocal relations. Moreover, Section 2 of Law 1/1979 allows for extradition based on good relations, which is in Indonesia's interests.

In the fight against transnational crimes like terrorism, corruption, and crimes against humanity, the relationship of reciprocity within the sphere of extradition is an essential component of the fight. In extradition, reciprocity is the mutual exchange of criminal suspects between countries. Reciprocity can also refer to the mutual exchange of benefits and duties between two or more parties. The recent extradition of David Nusa Wijaya from the United States to Indonesia highlights the strong relationship of reciprocity between the United States and Indonesia. This event also serves as a demonstration of Indonesia's dedication to the battle against terrorism.

However, if the form of reciprocity is not specified before, there is a possibility that it will lead to instances of abuse and exploitation. For example, if one nation is more eager to hand over criminals to another nation than the other, this could lead to an imbalance in the exchange of suspects between the two nations. Consequently, the authority to grant or deny an extradition request is a sovereign power that belongs to each nation. How this freedom is exercised is of the utmost importance since it has the potential to affect the relationship between nations substantially.

In light of this, it is strongly suggested that an extradition treaty be established as soon as possible between two or more countries, particularly those that share common goals and principles, such as the fight against corruption, terrorism, and crimes against humanity. The rules and conditions for exchanging criminal suspects are outlined in an extradition treaty, a legally binding agreement between countries that specifies the terms and conditions. This treaty serves as a legal framework for the extradition process. It clarifies the requirements for extradition, such as the principle of double criminality, which stipulates that the offence for which extradition is requested must be considered a crime in both countries involved in the extradition request.

Identification of Problems and Challenges of the Extradition Process in Indonesia

According to the national law of each country, one country can choose to accept or reject a request for extradition from another country; there are some cases where an extradition request made by the requesting country can be rejected. Reasons for refusing extradition include the national laws of some countries forbidding it to extradite its citizens, non-fulfilment of the principle of double crime, respect for the doctrine of specialisation, and if the perpetrators of such crimes will be discriminated against if extradited or will be unfairly tried, tortured and sentenced to inhumane punishment, death penalty or being accused of political crimes (Saul, 2014).

International human rights instruments prohibit the extradition of perpetrators of crimes punishable by death and torture or inhuman and degrading punishments if the perpetrator is sent to the requesting country (Roecks, 1994). The onus lies with the requested state not accepting extradition requests and upholding human rights principles. Offenders can only be transferred to the requesting country if that country has made a written statement to withdraw the abovementioned allegations. Countries that have abolished the death penalty in their penal code, such as member states of the European Union, will reject any extradition request requiring the death penalty. Article 3 of the European Convention on Human Rights states, “No one shall be subjected to torture or inhuman or degrading treatment or punishment” (Council of Europe, 1950). A further basis can be found in *Soering v United Kingdom* (Council of Europe: European Court of Human Rights, 1989), where the judge applied the principle of non-refoulment, which involves the responsibility of the state for the act of transferring the individual to the state where he will be confronted at a certain level of risk because their human rights are violated (Greenman, 2015).

Section 13 of the Extradition Act states that Indonesia can refuse the request if the person to be extradited faces the death penalty. Furthermore, formal assurances are needed from the requesting country that the death penalty will not be imposed on the perpetrator before the

extradition process begins. Indonesia still applies the death penalty for several crimes, such as drug and terrorism crimes. Local and international activists have widely observed this regulation. According to the United Nations Human Rights Committee, such punishment is unlawful and contrary to Indonesia's international human rights obligations (OHCHR, 2016). Back in January 2015, this issue attracted much attention when a Brazilian citizen, Marco Archer Cardoso Moreira, was sentenced to death in Indonesia for drug smuggling. Moreira's lawyer said that the Indonesian Government had rejected the Brazilian Government's request to extradite Moreira to allow him to serve his prison sentence in Brazil (Human Rights Watch, 2015). Moreira is not the only foreign national on death row; six other convicts from various countries were also convicted on drug trafficking charges, but it is known that only Brazil has officially requested the extradition of its citizens. Even though there is no extradition treaty between the two countries, Indonesia can grant a request under Section 2 of the Extradition Act if the countries involved have good relations and it is in the interest of Indonesia as a whole.

Several countries have refrained from proceeding with extradition requests where the perpetrators face the death penalty. Courts in Italy and South Africa (Bianchi, 1997; Mohamed and Another v President of the Republic of South Africa and Others, 2001) provide examples where both refuse to extradite the offender to the requesting country even though satisfactory guarantees are not to apply to the death penalty are available. The basis of the ruling lies in an international commitment to respect the right to life. Article 3 of the Universal Declaration of Human Rights (UDHR) stipulates, "Everyone has the right to life, liberty and personal security." Taking a broader perspective under international law means that each country must recognise their obligation to protect life by taking positive action to protect those under its jurisdiction. The Indonesian Government should take this particular step because the death penalty issue is not only a national criminal justice issue but has entered the human rights discourse.

If the extradition request is made by more than one requesting country, the requesting country must decide which has the right and jurisdiction over the perpetrator of the crime. The main decision points in this regard are the order in which requests for extradition are received from the requesting country, which of these requesting countries has an extradition treaty with the requested country, the gravity of the crime committed by the perpetrator, and the citizenship status of criminals.

However, according to the authors, the extradition process must be overcome to achieve jurisdiction over the person or suspect who is wanted for trial in the country where the crime was committed or in the requesting country. For this reason, countries must seriously consider the conclusion of extradition treaties. In the development of extradition treaties, it can be said that international cooperation offers a reference for countries wishing to expand

the use of extradition. Countries must understand the substantive scope of the extradition process, the good intentions of each country, international practice, and customary international law; usually, extradition treaties require a list of extraditable offences. In the case of extraditable offences, prohibited or criminal activities must be described in the agreement. Therefore, the fundamental prerequisite for extradition is acknowledging by both the requested state and the requesting state that the crime is a crime to which extradition can apply (Caruso, 2006).

Other problems may arise in cases where third parties are involved. According to the extradition treaty, in this scenario, the requesting country must process the trial and punish the perpetrator first. After the perpetrator has finished serving his sentence, it can only be transferred to a third party. A new extradition request for a different criminal offence must be made to comply with the new *bis in idem* principle. Although this technique is effective, it can be suggested that countries apply legal models or extradition treaties to accommodate the concerns and interests of the countries involved, including third parties. Cooperation between related countries offers some insights and alternatives to overcome these challenges.

As shown by the case examples in Table 2, Indonesia has successfully cooperated with partner countries in the extradition process. Hiccups can only be found in the case of Subagio Lagaida Prabowo, a criminal who fled to Australia. The first request was made on November 23 by NCB-Interpol Indonesia to find and arrest suspects. The arrest was made at the Australian Federal Police in Sydney, followed by a request for extradition from the Indonesian Ministry of Law to the Australian High Court; unfortunately, in February 1995, the request was rejected because the Australian High Court found errors in the extradition request. The two suspects were arrested in December 1995, followed by a second extradition request, which the Law Department sent to the Australian Embassy in Jakarta. In February 1996, a Sydney judge agreed that the suspect was eligible for extradition to Indonesia. The length of the extradition process is a constraint visible from the previous examples, which took one full year from the time the application was submitted until the perpetrator was transferred to the requesting country.

In addition to the abovementioned cases, Indonesia is experiencing difficulties implementing the extradition treaty with Singapore. It was known that many perpetrators of corruption cases in Indonesia had fled to Singapore to avoid punishment. The existing treaty that has not been ratified makes it more complex to ask for Singapore's assistance in capturing those offenders. The case of Hartawan Aluwi served as an example, and the Century Bank Graft fugitive fled to Singapore to seek protection. The lack of ratification of the treaty between the two states made Singapore refuse Indonesia's request for extradition. Instead, the Singapore authority deported Aluwi (Arshad, 2016).

Many states could also have entered into multilateral or regional extradition agreements. ASEAN has been developing a model extradition treaty to increase regional cooperation regarding extradition. The idea emerged during Bali Concord I in 1976, and the discussion has progressed. Each state stated their concern, especially on the “obligation to extradite” clause, as the diverse legal systems and procedures make it difficult to produce a unified opinion on this matter. Last year, a draft was made after some new inputs from the member states were considered during the 8th Working Group Meeting on the Model ASEAN Extradition Treaty (Ministry of Foreign Affairs of the Republic of Indonesia, 2018). If such a mechanism were implemented in the future, it could be an effective alternative in dealing with transnational crimes within ASEAN, given that each member state would respect the commitment within the treaty.

The existence of extradition as a response to Indonesia’s criminal jurisdiction against perpetrators of crimes is still important to implement, even though various barriers may develop. Extradition is a response to Indonesia’s criminal jurisdiction against perpetrators of crimes. Several factors contribute to this phenomenon, some of which are as follows:

First, if Indonesia were to enforce the extradition procedure, it would be able to prosecute and punish criminals according to its criminal code. This would be a significant advantage for Indonesia. This would equip Indonesia with a tool to enforce its laws and ensure that victims of crime are treated with justice. It would demonstrate Indonesia’s dedication to the rule of law and hold criminals accountable for their actions if the country took action against those who commit crimes.

Second, because it would be a requested state, Indonesia would have the ability to enhance its participation within the world community to combat global crimes and prevent impunity for those who commit crimes. If Indonesia were to demonstrate its commitment to cooperation and collaboration in the fight against crime by working closely with other nations to enforce the extradition process, it would do so by working closely with other countries to enforce it. Not only would this help bring offenders to justice, but it would also send a message to others who might commit crimes in the future that they will be held accountable for their actions, even though they might try to hide.

Occasionally, extradition can encounter roadblocks due to various factors, including disparities in legal systems and procedures between countries, cultural distinctions, and political considerations. However, these challenges can be conquered by increasing international collaboration and coordination and creating more effective and efficient extradition procedures.

These challenges can also be overcome by enhancing the existing extradition accords and ensuring that they are effectively carried out and policed. This can require conducting

regular reviews and making necessary treaty updates to account for the environment's ever-shifting nature and resolve any potential voids or flaws in the extradition procedure. To ensure that the extradition procedure is performed efficiently and successfully, improved cooperation and coordination between countries may also be included.

Conclusion

Establishing an extradition process provides a potential solution to the problems arising from Indonesia's limited capacity to exercise criminal jurisdiction over individuals who commit crimes outside the country's borders. Considering the benefits achieved, particularly where Indonesia is the country making the request, the process makes it easier for criminals to be returned to Indonesia, allowing Indonesia to prosecute and punish those who committed the crimes. Even while a country can extradite a criminal offender without first having a prior extradition treaty, the existence of an extradition treaty cannot be overlooked, especially in the absence of sufficient legal reasons. The Extradition Act established a transparent framework and procedure for Indonesia's extradition procedure. Several branches of the government have been incorporated into a chain of command that has been established. However, a fresh viewpoint is required before proceeding with the extradition to comply with governments' obligations towards human rights. When the option of the death sentence is being considered, the state being asked to reconsider its position and carry out its responsibility to safeguard people who fall within its purview must do so.

Indonesia's cooperation with the other seven nations (Malaysia, the Philippines, Thailand, Hong Kong, Australia, South Korea, and Singapore) in implementing the extradition process was successful. As demonstrated in the case of Subagio Lagaida Prabowo, a snag occurred where Australia was the requested country. Due to a minor error, Indonesia was compelled to submit another extradition request to Australia, which postponed the entire procedure. Because Indonesia and Singapore have not yet ratified their extradition treaty, many convicted criminals in Indonesia who have been involved in graft and corruption have fled to Singapore, hoping to receive shelter there. This is another obstacle. One possible solution to this problem is for ASEAN member states to collaborate on drafting a model extradition treaty. If the member states could agree on a course of action, it would be possible to establish a united and efficient system for extradition. In the foreseeable future, states must cultivate the will and commitment necessary to negotiate extradition agreements and collaborate to combat global criminal operations.

We want to suggest that countries should have more elaborated extradition treaties, including the model law, which could accommodate the legal system of those countries following the Anglo-Saxon and Continental Law systems because there are challenges in

implementing the extradition treaty between states. It is recommended that a multilateral or regional model law or set of treaties on extradition be used as a basis and reference for the conclusion of a specific bilateral treaty among the countries in the relevant region. In conclusion, international cooperation founded on the fundamental instruments protecting human rights is one of the most important factors in carrying out the extradition treaty. Trust and goodwill are additional variables necessary to carry out the extradition process properly.

Additionally, Indonesia's government can improve the implementation of its extradition law by training relevant stakeholders, including law enforcement officials, judges, and prosecutors, on the intricacies and complexities of the extradition process. This course would ensure a better understanding of the legal framework and the application of the law in the context of each unique situation that may arise.

In addition, the government may offer assistance to the state that has requested extradition in order for that state to fulfil their extradition obligations. This assistance may take the form of offering legal assistance, gathering and producing evidence, or communicating with the authorities of the requested state. This could help to overcome the difficulties and challenges that may arise during the process and guarantee that the extradition pact is implemented smoothly and effectively.

Future researchers could extend the scope of the study of Indonesia's extradition procedure by investigating additional factors that affect the implementation of the extradition treaty. These factors include political and economic considerations, cultural and linguistic barriers, and differences in customs and practices. Besides, a comparative study of the execution of extradition treaties in other regions could provide a more in-depth and nuanced understanding of the difficulties and best practices associated with this subject.

It is essential to note that the potential biases inherent in the sources used and the limited data available are two of the limitations of this research. Other limitations include the limited data available on implementing Indonesia's extradition treaty. The data may also be subject to restrictions in terms of time and geography, and the chosen case studies may only partially reflect the complexity and nuances of the entire process. These limitations may be present.

A more exhaustive and methodical data collection process is required for future research in this field. This process must include using qualitative and quantitative methods to collect data from relevant stakeholders, such as law enforcement officials, judges, and the general public. This category includes case studies, surveys, and in-depth conversations with key stakeholders. Using technology, such as online databases and case management systems,

could also significantly improve the precision and productivity of the data collecting and analysis processes.

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