

Juridical Review of Extradition Treaty Between Indonesia and the Republic of South Korea in Narcotics and Psychotropic Crimes

Dessy Lina Oktaviani Suendra

*Faculty of Law Warmadewa University Denpasar, Bali
Corresponding author. Email: dessysuendra@gmail.com*

ABSTRACT

Extradition is a form of international cooperation to arrest and hand over a suspect, defendant, or convict who is under the jurisdiction of another State to a State entitled to try them. As one of the countries that are often the target of criminal acts of narcotics among countries, Indonesia must make the rule of law a preventive measure to prevent narcotic crime from increasing. One of these preventive efforts is establishing rules regarding the criminalization of narcotics crimes between countries and an extradition treaty. The problems raised to be analyzed and answered in this study are: 1) what are the regulations for extradition treaties in Indonesia? 2) What is the juridical review of the extradition treaty between Indonesia and South Korea in settlement of narcotics and psychotropics cases? In order to achieve the research objectives, scientific research is conducted using a normative legal research method. This research model was chosen because what is being studied reveals the systematic regulation for criminal acts of narcotics between two countries, especially those committed in Indonesia and South Korea. This study hopes that the arrangements regarding extradition treaties in Indonesia can be understood and provide solutions to narcotics cases occurring in Indonesia and South Korea.

Keywords: *Extradition Treaty, South Korea, Narcotics.*

1. INTRODUCTION

An extradition treaty is a form of overcoming criminal crimes between countries that emphasizes the issue of the human rights of the perpetrators of the crimes. When it comes to the protection of human rights, extradition institutions provide enormous protection. For example, suppose a suspect or defendant of a criminal crime is sentenced to death in the requesting country, while in the requested country, the law on the death penalty is not provided for in its national law. In that case, the requested country has the right not to hand over the suspect or defendant for the crime. Likewise, the suspect or defendant can only be tried by the requesting country based on the type of crime requested; they may not be tried for crimes other than those specified in the extradition request.

Extradition is a formal surrender, either based on a pre-existing extradition agreement or based on a reciprocal relationship of a person suspected of having committed a crime (suspect, accused, or defendant) or on a person who has been sentenced who has had

definite binding force for the crime they have committed (convicted, convicted) by the country where he is located to the country that has jurisdiction to try or punish him, at the request of the country that has jurisdiction over the country where the person concerned is located, with the intent and purpose of prosecuting them or carrying out their sentence or the remainder of their the sentence [1].

In 2007, the Indonesian government ratified the extradition treaty between the Republic of Indonesia and South Korea through Law No. 42 of 2007. It was conducted based on the desire of both parties to establish collaboration for the possibility that both countries need assistance in arresting fugitives of criminal cases, perpetrators of crimes related to banking, finance, and/or other types of crime.

One of the transnational crimes that often occur throughout the world is the criminal acts of Narcotics and Psychotropics. In Indonesia itself, regarding these crimes, it has been regulated in Law Number 35 of 2009 concerning Narcotics which includes criminal sanctions, imprisonment, fines, and death sentences.

Internationally, narcotics and psychotropic substances have been defined in Article 3 (1) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (“UN Convention”) (p. 127). Indonesia has ratified the UN Convention through Law Number 7 of 1997 concerning Ratification of United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Law 7/1997”).

It is undeniable that in addition to banking crimes and corruption, the crimes that most often have fugitives are criminal acts of narcotics. The perpetrators of these narcotics crimes often flee abroad and sometimes even commit their crimes again in the country they fled. This makes the extradition treaty very important to eradicate narcotics cases between countries, including between Indonesia and the Republic of South Korea.

2. METHOD

This study uses normative legal research to reveal legal arrangements regarding extradition provisions between Indonesia and South Korea related to criminal acts of embezzlement of Narcotics and Psychotropics. The approach used is statutory, a conceptual approach, and an analytical approach. The data used are in the form of primary data and secondary data collected by documentation and recording techniques and then analyzed by hermeneutic and qualitative techniques.

This study uses normative legal research. With this method, the study was conducted on legal norms through the principles of legislation. The problem approach used is the statutory approach, conceptual approach, and analytical approach. Secondary data or legal materials were collected through documentation and recording techniques using a file system.

3. RESULT AND DISCUSSION

3.1 *Extradition Treaty Arrangement in Indonesia On December 14, 1990, the United Nations*

General Assembly passed Resolution No. 45/117 on the Model Treaty on Extradition. Although only in the form of a legal model and is not yet a positive international law, the agreement can be used as a model by countries in making extradition treaties. Now almost all countries in this hemisphere are familiar with a legal institution called extradition [2].

In general, extradition results from the right to asylum, which is a political goal and a means to achieve power. Extradition is practiced to penetrate national borders in the sense that national criminal law can be applied to war criminals who fled to other countries or in order that court decisions against criminals who fled abroad can be executed.

The word *extradition* is derived from the Latin *extradere* consisting of *ex*, which means *to go out*, and *tradere*, which means *to surrender* [3]. The

term *extradition* is usually used in the handover of criminals from a country to a requesting country, which can be executed formally either based on a pre-existing extradition treaty or based on the principle of reciprocity or good relations, against someone who is accused of committing a crime (suspect, defendant, accused) or someone having been sentenced to a criminal sentence that has binding legal force (convict), by the country where they have been living (the requested country) to the country that has jurisdiction to try or conduct punishment (the requesting country), at the request of the requesting country, to try and or execute the sentence.

Indonesia has a national regulation regarding extradition, namely Law Number 1 of 1979 concerning Extradition. In addition to Law Number 1 of 1979, Indonesia has laws that transform the ratification of extradition treaties that Indonesia has entered into with other countries. They are Law Number 9 of 1974 concerning Ratification of Treaty between the Government of the Republic of Indonesia and the State of Malaysia concerning Extradition, Law Number 10 of 1976 concerning Ratification of Extradition Treaty between the Government of the Republic of Indonesia and the Government of the Philippines, Law Number 2 of 1978 concerning Ratification of Treaty between the Government of the Republic of Indonesia and the Government of the Kingdom of Thailand concerning Extradition, Law Number 8 of 1994 concerning Ratification of the Extradition Treaty of the Government of the Republic of Indonesia and the Government of Australia, Law Number 1 of 2001 concerning Ratification of the Treaty between the Government of the Republic of Indonesia and the Government of Hong Kong for the Handover of Runaway Lawbreakers and Law Number 42 of 2007 concerning Ratification of the Extradition Treaty between the Republic of Indonesia and the Republic of Korea.

By having made these agreements concerning extradition, the state of Indonesia has carried out its role as a state of law. By the concept of the rule of law, according to Julius Stahl, there are four essential elements, namely the protection of human rights, the division of power, government based on laws, and the State Administrative Court; hence, Indonesia as a state of the law has performed its role well by making extradition treaties as an effort to eradicate international crimes.

3.2 *Juridical Review of the Extradition Treaty between Indonesia and South Korea in settlement of Narcotics and Psychotropic Cases*

The development of the use of narcotics today is increasing and not for the benefit of scientific treatment but turning its function to obtain huge profits [4]. The statutory provisions governing narcotics issues have been drawn up and enforced through the Narcotics Law; however, crimes related to narcotics have not been appeased. In recent cases, many drug dealers and

traffickers have been caught and received severe sanctions. However, it does not seem to have a deterrent effect for other perpetrators, and there is even a tendency to expand their area of operation [5]. Therefore, cooperation between countries needs to be built to eradicate the illicit trafficking of narcotics that has spread throughout the world.

In this era of free trade, criminals no longer recognize territorial boundaries or jurisdictional boundaries for them to operate to commit crimes. They have long used the concept of free trade without being faced with legal signs; even what is happening in various countries around the world today is the law with all its limitations becomes a protector for the perpetrators of these crimes [6].

Narcotics and psychotropic crimes internationally have been defined in Article 3 (1) United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 ("UN Convention") (p. 127). Indonesia has ratified the UN Convention through Law Number 7 of 1997 concerning the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 ("Law 7/1997"). This shows the seriousness of the Indonesian state to eradicate international narcotics crimes.

The Indonesian government's further efforts in eradicating transnational narcotics crime are realized by making an extradition treaty. With the existence of an extradition treaty, if its citizens are threatened with punishment in another country for narcotics and psychotropic cases, extradition will be executed. Elucidation of number 5 of Law 7/1997 states: "The crimes referred to in Article 3 paragraph (1) of this Convention include crimes that can be extradited in an extradition treaty made between the Parties."

If the parties do not have an extradition treaty, this convention may be used as the legal basis for extradition for crimes that fall within the scope of the application of this article. Furthermore, other efforts that can be made are listed in the Elucidation of number 7 of Law 7/1997, namely: "It opens up the possibility for States parties to transfer the proceedings from one country to another if the transfer of the proceedings is deemed necessary in the interest of a better implementation of justice."

Then, regarding extradition in Indonesia, it is further regulated in Law Number 1 of 1979 concerning extradition ("Law 1/1979"), which explains that extradition is: [1] Submission by a country to a country requesting the surrender of a person suspected or convicted for committing a crime outside the territory of the country that will hand over and within the jurisdiction of the territory of the country requesting the surrender because it is authorized to try and convicted them.

Furthermore, the Elucidation of Article 7 of Law 1/1979 states: "In the interest of protecting the citizens themselves, it is considered better if the person

concerned is tried in their own country. However, it is possible that the person would be better tried in another country (in the requesting country) considering the considerations in the interests of the country, law, and justice."

In one instance, in 2019, two foreigners were extradited by the Bali High Court to the South Korean Government. They are Alex Go, a citizen of the Philippines, and Lim Thow Khai, a citizen of Malaysia. The Indonesian police arrested the two foreigners at Ngurah Rai airport on July 11, 2017. After that, Interpol issued a red notice because they were smuggling class I narcotics of methamphetamine weighing 2,050 grams. The South Korean government was hunting for these two people for committing narcotics crimes in South Korea with a minimum prison sentence of 7 years and a maximum of 30 years. This shows tangible evidence of the function of the extradition treaty between Indonesia and South Korea in eradicating international narcotics crimes. This action is also in line with the theory of punishment, which stipulates that punishment must be applied as a form of defense of public order and as revenge for the crimes committed.

4. CONCLUSION

Indonesia has already had a national regulation regarding extradition, namely Law Number 1 of 1979 concerning Extradition. Meanwhile, an extradition agreement between Indonesia and South Korea is contained in Law Number 42 of 2007 concerning the Ratification of the Extradition Treaty between the Republic of Indonesia and Korea.

Regarding the settlement of narcotics cases, Indonesia has ratified the UN Convention through Law Number 7 of 1997 and established Law Number 35 of 2009 concerning Narcotics. Indonesia and South Korea have realized the regulation by eradicating international narcotics crimes through the narcotics eradication law and implementing the extradition treaty.

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REFERENCES

- [1] I. W. Parthiana, *Ekstradisi dalam Hukum Internasional Modern*. Bandung: CV. Yrama Widya, 2009.
- [2] I. W. Parthiana, *Hukum Pidana Internasional dan Ekstradisi*. Bandung: CV. Yrama Widya, 2004.

- [3] S. Sunaryo, *Ekstradisi & Bantuan Timbal Balik dalam Masalah Pidana Instrumen Penegakan Hukum Pidana Internasional*. Jakarta: Rineka Cipta, 2009.
- [4] Atmasasmita, *Tindak Pidana Narkotika Transnasional dalam Sistem Hukum Pidana Indonesia*. Badung: Citra Aditya Bhakti, 1997.
- [5] O. C. Kaligis and Associates, *Narkoba dan Peradilannya di Indonesia, Reformasi Hukum Pidana melalui Perundangan dan Peradilan*. Bandung: Alumni, 2012.
- [6] R. M. Padmanagara, *Kejahatan Internasional, Tantangan dan Upaya Pemecahan*. Jakarta: NCB Indonesia, 2014.