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Extradition Arrangements in Efforts to Eradicate Corruption Crimes in Indonesia

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Abstract

Corruption is a serious threat to the stability and security of the state and the international community and has weakened institutions, democratic values and justice. This article discusses extradition arrangements in Indonesian law and discusses efforts to eradicate corruption through extradition agreements. In conducting this research, this research uses a literature study research method. The results of this study are extradition can be carried out based on an agreement and if there is no agreement between the two countries, then extradition can be carried out on the basis of good relations between countries. If there is no previous extradition treaty between the requesting country and the requested country, the requesting country can request arrest through INTERPOL. In terms of returning assets resulting from corruption, there is a Mutual Legal Assistance in Criminal Matters (MLA) mechanism that can be applied this is because corruption is considered a serious crime and this crime is transnational in nature so it requires cooperation between countries to eradicate it.

Keywords: extradition; corruption; serious crimes; law enforcement.

Abstrak

korupsi sebagai ancaman serius terhadap Stabilitas dan keamanan negara dan komunitas internasional dan telah melemahkan institusi, nilai-nilai demokrasi dan keadilan. Artikel ini membahas pengaturan ekstradisi dalam hukum Indonesia dan membahas upaya pemberantasan kejahatan korupsi melalui perjanjian ekstradisi. Dalam melakukan penelitian tersebut, penelitian ini menggunakan metode penelitian studi kepustakaan. Hasil dari penelitian ini adalah Ekstradisi dapat dilakukan berdasarkan suatu perjanjian dan apabila belum ada suatu perjanjian diantara kedua negara, maka ekstradisi dapat dilakukan atas dasar hubungan baik antar negara. Dalam hal upaya penegakan hukum tindak kejahatan Jika tidak ada perjanjian ekstradisi sebelumnya antara negara peminta dan negara diminta, negara peminta dapat meminta penangkapan melalui INTERPOL. dalam hal pengembalian aset hasil tindak pidana korupsi terdapat mekanisme Mutual Legal Assistance in Criminal Matters (MLA) yang dapat diterapkan hal ini karena tindak pidana korupsi dianggap sebagai kejahatan berat dan kejahatan ini bersifat transnasional sehingga memerlukan kerjasama antar negara untuk memberantasnya.

Kata kunci: ekstradisi; korupsi; kejahatan serius; penegakan hukum

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Introduction

International treaties are agreements entered into between members of the community of nations and aim to result in certain laws (Kusumaatmadja 2015). From the above limitation, it is clear that in order to be called an international agreement, the agreement must be entered into by a subject of international law who is a member of the international community. International agreements can be used as the basis for determi-

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ning the basis of cooperation between countries, regulating various activities, and regulating dispute resolution issues that occur between countries. Therefore, there is not a single country in the world that does not have agreements with other countries, both bilateral and multilateral agreements (Mauna 2013). Just like with other countries, the Government of Indonesia also cooperates with other countries, one form of cooperation between the Government of Indonesia to overcome transnational organized crime with other countries is to enter into an extradition agreement.

Indonesia has regulated the extradition treaty through Law Number 1 of 1979 concerning extradition. In Article 1 of the extradition law, it is explained that extradition is the surrender by a country to a country requesting the surrender of a person who is suspected or convicted of committing a crime outside the territory of the country that submits it and within the jurisdiction of the territory of the country requesting the surrender, because it is authorized to adjudicate and convict him. This extradition is necessary because more and more criminals are running away from the investigation, prosecution, and criminal execution processes from the country where the crime was committed, this is what underlies the Indonesian government to cooperate with countries that are perceived as targets for criminals to commit crimes, run away and hide (Megawati 2019).

Not all countries have the same perception of an act that is considered a crime, in some cases regarding violations of decency, the application of law for immoral acts varies from one country to another, another example is the use of narcotics, in certain countries the use of narcotics is not considered to violate the law while in Indonesia the use of narcotics is considered a crime (Kalalo 2016). As is well known, extradition is initially a problem between countries, therefore the arrangements are contained in international law, especially in the form of international agreements, besides that in certain limits extradition is also a domestic matter of the state, therefore it is regulated in national law, especially regulations on extradition. One of the crimes of particular concern is the crime of corruption, because many of the perpetrators of corruption among them deliberately fled and hid to other countries with the intention of avoiding legal entanglements in Indonesia (Fitriyani 2019).

Many efforts to eradicate corruption have been carried out by the Government of Indonesia, one of which is the establishment of Laws related to the Eradication of Corruption, but these efforts are still lacking because the perpetrators of these corruption crimes often flee to countries where the Indonesian government has not entered into an extradition agreement with the country. So that extra attention is needed to this corruption case so that the perpetrators can be prosecuted and compensate the state for losses. This crime has a negative impact on the welfare of the Indonesian people and there is an unhealthy political system in it because of this corruption crime, often the perpetrators of this corruption are political officials in this country so that they can control the police officers in their own country to be able to escape outside country to hide and escape. As explained above, one of the efforts that can be made to arrest the perpetrators

who fled abroad is with an extradition treaty, but what if the perpetrators of the crime fled to a country where the extradition treaty has not been made and can the Indonesian government still make arrests.

Research Problems

The research problem is how are the regulations regarding extradition in Indonesia and how are efforts to eradicate corruption through an extradition treaty?

Research Methods

This research uses a qualitative approach, which describes and describes extradition arrangements in Indonesia as an effort to eradicate corruption. The way to describe and decipher the data is through several expert opinions. So by using a qualitative approach, this research is expected to provide an understanding of extradition arrangements in Indonesia as an effort to eradicate corruption.

The data collection technique used in this study is library research, namely collecting various laws and regulations, documents, literature collections, internet access related to extradition arrangements in Indonesia (Soekanto 2009). Literature research is carried out by reading and understanding books, journals and related articles relating to extradition arrangements based on Indonesian law in an effort to eradicate corruption. The data in this study were collected through literature study. The data analysis technique used in this research is qualitative data analysis, which describes quality data in the form of regular, coherent, logical, non-overlapping, and valid sentences, thus encouraging data interpretation and analysis (Abdulkadir 2004).

Discussion

Extradition Arrangements in Indonesia

Extradition is the surrender of the perpetrator of a criminal act who fled outside the territorial area of another country from the place where the perpetrator committed the crime, where the perpetrator can be tried by the country where the crime was committed. Requests by States requesting and being asked to surrender the crime require general conditions, which must be based on agreement between the States wishing to extradite. Generally, criminals who have fled from one country to another can be extradited if those countries have entered into a special treaty on extradition. In the absence of such an agreement, the country whose extradition is requested is not obliged to hand over the perpetrator. It is customary for the countries concerned to conclude bilateral extradition treaties. Many countries have bilateral agreements for this purpose, although some other countries prefer multilateral agreements, especially those belonging to regional groups (Angkasari 2014). Formal legal provisions or based on Indonesian laws and regulations regarding extradition treaties are Law Number 1 of 1979 concerning Extradition (Sunarso 2009).

The Indonesian government has regulated extradition provisions by enacting Law Number 1 of 1979 concerning extradition. This is the legal basis for making treaties with other countries regarding extradition, either through official agreements or based on existing reciprocal relationships. It is known that the Indonesian government has made extradition agreements with several countries, including: Extradition agreements with Malaysia, the Republic of Korea, the Republic of India, the Socialist Republic of Vietnam, Papua New Guinea, the People's Republic of China, the United Arab Emirates, the Kingdom of Thailand, the Republic of the Philippines, Australia. Extradition is a legal principle in international criminal law where the effort must initially go through a procedure, namely an agreement between the two interested countries, this effort concerns what crimes can be attempted for extradition. The extradition treaty itself is an agreement that is used as a reason to request or surrender the perpetrator of a crime to be processed according to the law where the perpetrator committed the crime. Extradition efforts can be made on the condition that the crimes committed or alleged are both crimes or crimes regulated by the laws of each country. Either the requesting country or the requested country. This principle is called the Double Criminality Principle (I Wayan Parthiana 2004).

Although there have been negotiations regarding cooperation to carry out extradition, this agreement cannot immediately be carried out. This is related to the conditions of application, namely the obligation to ratify for the two countries that have agreed to carry out extradition. These terms are usually stated in the terms of the agreement that was made previously. The implementation of the ratification is a commitment for the two countries that have signed the cooperation regarding this extradition, if one of the countries does not ratify the extradition effort cannot be carried out. Regarding international agreements based on article 11 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads:

The President in making other international agreements that will produce an extensive and fundamental impact on the lives of the people which is linked to the state financial burden, and/or that will requires an amendment to or the enactment of a law, shall obtain the approval of the DPR.

The provisions in Article 11 paragraph (2) of the 1945 Constitution of the Republic of Indonesia are then further regulated in Articles 9 and 10 of Law Number 24 of 2000 concerning international agreements. Article 9 of the Law on international treaties explains that:

1. Ratification of an international agreement by the Government of the Republic of Indonesia is carried out to the extent required by the international agreement.
2. The ratification of the international agreement as referred to in paragraph (1) is carried out by law or a presidential decree.

Furthermore, in Article 10 of the Act it is explained that :

- The ratification of international agreements is carried out by law when it relates to:
- a. political, peace, defense, and state security issues;

- b. change of territory or determination of the boundaries of the Republic of Indonesia;
- c. sovereignty or sovereign rights of the state;
- d. human rights and the environment;
- e. establishment of new legal rules;
- f. foreign loans and/or grants.

With regard to the extradition treaty, because this extradition treaty is always related to state sovereignty and human rights, legality or written rules are needed, namely the Act as a stipulation that an agreement has been formed between the Indonesian state and the country that wants an extradition treaty. Therefore, each country must ratify the extradition treaty in the form of a law for each country. This is also regulated in Law Number 37 of 1999, in Article 1 point 3 it is stated that:

International agreement is an agreement in any form and designation, which is regulated by international law and made in writing by the Government of the Republic of Indonesia with one or more countries, international organizations or other international legal subjects, and gives rise to legal rights and obligations to the Government of the Republic of Indonesia.

An international agreement must be made in writing by the Government of Indonesia, either in the form of a law or a presidential decree. In an extradition treaty, certain principles or principles that apply are also required to ensure that this extradition treaty runs properly, the principles or principles regulated in the Law on Extradition are :

1. Article 2 of Law Number 1 of 1979 concerning Extradition

Extradition is carried out based on an agreement and if there is no agreement between the two countries, extradition can be carried out on the basis of good relations between countries and if the interests of the Republic of Indonesia so desire. This also confirms Indonesia's availability for extradition.

2. Article 4 of Law Number 1 of 1979 concerning Extradition

In this article it is explained that extradition is carried out for the types of crimes that have been mentioned in the list of crimes attached as an inseparable text in this Law. However, it is not limited to the types of crimes that have been attached which can be extradited, other types of crimes not mentioned in the agreed text can also be extradited based on the policy of the requested country. With government regulations also other types of crimes can be added as new crimes in the script.

3. Article 5 of Law Number 1 of 1979 concerning Extradition

Extradition is not carried out for political crimes. The perpetrators of political crimes are not handed over because they relate to the right of the state to provide protection (political asylum) to political fugitives. Because political crimes are considered too broad and it is explained in paragraph (2) of this article that crimes which are essentially more ordinary crimes than political crimes are not considered as political crimes.

4. Article 7 of Law Number 1 of 1979 concerning Extradition

Requests for extradition of Indonesian citizens can be refused, this is because the person concerned because of the better conditions to be tried in the place where he

committed the crime. However, there is a possibility that the person is better tried in another country (the requesting country) considering considerations for the interests of the state, law and justice. The submission is based on the principle of reciprocity, namely reciprocity.

5. Article 8 of Law Number 1 of 1979 concerning Extradition

A request for extradition may be refused if the alleged crime was committed wholly or partly within the territory of the Republic of Indonesia.

6. Article 9 of Law Number 1 of 1979 concerning Extradition

A request for extradition may be refused if the person requested is being processed in the Republic of Indonesia for the same crime.

By taking into account the principles/principles that apply in the extradition treaty, it is hoped that the extradition process can run effectively and can benefit the interests of the state, law and justice.

Efforts to Eradicate Corruption through the Extradition Agreement

Corruption crimes have certain specifications that are different from general criminal law, such as deviations from procedural and material laws which are regulated to minimize data leakage and deviations from the state's finances and economy (Damayanti 2014). United Nations Convention Against Corruption (UNCAC) 2003. describes corruption as a serious threat to the stability and security of the state and the international community and has weakened institutions, democratic values and justice, and jeopardized sustainable development. and law enforcement (Atmasasmita 2006). In addition, from an international point of view, corruption is basically a crime that is included in the classification of white-collar crimes, with complex consequences, and has attracted the attention of the international community. The Eighth United Nations Congress on "Prevention of Crime and Treatment of Offenders", which approved the Resolution on "Corruption in Government" in Havana in 1990, set out the consequences of corruption in the following forms (Sahati and Alam 2020):

1. Corruption of Public Officials (Corrupt Practices by Public Officials):
 - a. Can undermine the potential effectiveness of any type of government program.
 - b. hold back development
 - c. Forming the community's individual victims.
2. Corruption is closely related to various forms of economic crime, organized crime and money laundering (Arief 1998).

Currently the perpetrators of criminal acts of corruption often hide and flee to countries where the Indonesian government has not entered into an extradition agreement with that country, there are several ways that can be used to arrest perpetrators who fled to a country where the Indonesian government has not entered into an extradition agreement where the perpetrators of corruption hiding or running away, namely by making diplomatic efforts on the basis of good relations with the country concerned or asking INTERPOL for assistance.

In Article 2 paragraph (1) of Law Number 1 of 1979 concerning Extradition, it is explained that extradition is carried out based on an agreement. So if there is a perpetrator of a criminal act of corruption who flees to a country where it is known for sure that the perpetrator is in that country, then the process of handing over the perpetrator is based on the extradition agreement that was made earlier. However, for cases where the perpetrator is known to be in a country where the Indonesian government has not yet extradited, this does not necessarily mean that Indonesia cannot request the surrender of the perpetrator. In Article 2 paragraph (2) of Law Number 1 of 1979 concerning Extradition, it is explained that extradition can be carried out on the basis of good relations and if the interests of the Republic of Indonesia so desire. This means that extradition does not absolutely require an extradition treaty beforehand, but it should be noted that extradition will be easier to carry out if there is an agreement beforehand because there is a legal basis for requesting and handing over the perpetrators of the crime.

In accordance with the objectives of ICPO-Interpol in Article 2 of the Constitution of the International Criminal Police Organization-Interpol, the function of Interpol itself can be divided into 2, namely the function of eradicating international crimes and the function of international cooperation. The function of eradicating international crimes focuses more on the exchange of information between the police of Interpol member countries, the identification of the person or party being wanted and the arrest of the person requested for extradition. Meanwhile, the international cooperation function focuses more on the issuance of notices containing requests from a country regarding cooperation or warnings that allow the police in member countries to share important information related to crimes. There are 8 types of notices issued by the Interpol Secretariat General, namely: Red Notice, Yellow Notice, Blue Notice, Black Notice, Green Notice, Orange Notice, Purple Notice and UN Security Council Special Notice.

In the event that there is no previous extradition treaty between the requesting country and the requested country, the requesting country may file a request for arrest through Interpol. The arrest request was made by Interpol through Red Notice and diffusion which was then sent to the Secretary General of Interpol's ICPO which would then be forwarded to the NCB (National Central Bureau) in the country where the perpetrator is located. For the diffusion itself, the notice is issued by the NCB from the Interpol country itself. The role of ICPO-Interpol in extradition is also contained in extradition treaties between countries, such as the extradition treaty between the Republic of Indonesia and Australia. Where in Article 10 paragraph (1), "Australia-Indonesia Extradition Agreement" it is stated that in an emergency, a state party may use the Interpol facility from the International Criminal Police Organization to temporarily detain people wanted by the requesting country, while waiting for the requesting country to extradite them. to that country by diplomatic request. Therefore, Interpol's role in extradition is not limited to disseminating information about fugitives and extradition that have not occurred. The request is made by a country that has not signed an extradition treaty with

the requested country, but if diplomatic means cannot be adopted, it can also be used as an alternative to the country and included in the extradition treaty.

One of Interpol's roles in handling corruption cases in Indonesia is the bribery case for the construction of the Sea Games athlete guesthouse, Muhammad Nazarudin. On Monday, July 4, 2011 the Corruption Eradication Commission (KPK) asked the National Police to issue a Red Notice to Muhammad Nazarudin. The mechanism for the Police, which is part of Interpol, proposed the name of a suspect at the request of the KPK. After the name was submitted, then, ICPO disseminated it to 188 ICPO member countries. With the aim of repatriating Nazarudin whose whereabouts are still unknown (Indonesia Corruption Watch 2011). It did not take long after the publication of the Red Notice, finally on August 6, 2011 Nazaruddin and his wife, Neneng Sri Wahyuni, were finally arrested by Interpol in Cartagena, Colombia. During his escape, Nazaruddin is known to have been in several countries, including Singapore, Vietnam, Malaysia, and the Philippines. Nazaruddin is said to have used a false identity to be able to move countries, making it difficult to pursue (Ramadhan 2020). This is evidence that INTERPOL's role in extradition is not limited to the dissemination of information about fugitives and extradition committed by the requesting country which does not yet have an extradition treaty with the requested country. But the role of Interpol can also be used as an alternative by countries when making extradition agreements if the diplomatic route cannot be taken. Such as temporarily detaining people wanted by the requesting country, while waiting for the requesting country to extradite them to that country through a diplomatic request.

Apart from extradition and the involvement of INTERPOL, there are often other steps in the law enforcement process for criminal acts of corruption who have fled abroad, namely Mutual Legal Assistance in Criminal Matters (MLA). This is regulated in Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters. Through the Mutual Legal Assistance in Criminal Matters (MLA) mechanism, Indonesia can also return state-owned assets obtained abroad by perpetrators of criminal acts of corruption in order to take action against perpetrators of corruption who fled abroad. Extradition and mutual legal assistance by agreement (Fauzin 2021).

Conclusion

The extradition treaty must also pay attention to several principles or principles that apply to this matter solely so that this extradition treaty runs well. Extradition can be carried out based on an agreement and if there is no agreement between the two countries, then extradition can be carried out on the basis of good relations between countries. This also confirms Indonesia's availability for extradition. If there is no previous extradition agreement between the requesting country and the requested country, the requesting country can submit a request for arrest through Interpol.

Interpol's role in extradition is not limited to disseminating information about fugitives and extradition committed by the requesting country which does not yet have an extradition treaty with the requested country. But the role of Interpol can also be used as

an alternative by countries when making extradition agreements if the diplomatic route cannot be taken. In terms of returning state assets from the proceeds of corruption, the mechanism that can be done is to use Mutual Legal Assistance in Criminal Matters (MLA).

Suggestion

Corruption crimes need to be given special attention considering Indonesia's very strategic location so that it is vulnerable to various forms of transnational crime. For this reason, the Ministry of Foreign Affairs as the spearhead of the Indonesian Government in international cooperation continues to intensify international cooperation in overcoming corruption crimes in order to protect Indonesia's national interests and sovereignty.

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