
Transnational Crime and Extradition Challenges of Criminal Law in the Global Era

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Abstract

This study analyzes the implementation of Law No. 1 of 1979 concerning Extradition in facing the challenges of transnational crime in Indonesia, especially related to international collaboration and the influence of bilateral agreements. Globalization has increased transnational crime, including narcotics, money laundering, terrorism, and human trafficking, so that extradition has become an important instrument in criminal law enforcement. This study uses a normative legal approach, by examining the provisions of extradition law and the challenges faced, including differences in legal systems, jurisdictional limitations, and obstacles related to human rights. The results of the study show that Law No. 1 of 1979 regulates extradition based on bilateral agreements or the principle of reciprocity. However, the main obstacles include the limitations of extradition agreements with a number of countries, as well as differences in legal principles that often hinder extradition requests. Another challenge is the issue of human rights, where Indonesia refuses extradition if the requesting country applies the death penalty or torture. This study recommends increased diplomacy to expand extradition agreements, active participation in international forums, and human rights protection clauses in bilateral agreements.

In conclusion, the effectiveness of law enforcement against transnational crimes through extradition can be improved by expanding bilateral agreements, strengthening international collaboration, and accommodating human rights standards in extradition policies. These steps are necessary to ensure that transnational criminals cannot escape legal responsibility.

Keywords: *Transnational Crime, Extradition, Criminal Law*

INTRODUCTION

In Indonesia, Law No. 1 of 1979 concerning Extradition is the main legal basis in handling the extradition process. This law regulates the requirements, procedures, and mechanisms for extradition that can be carried out between Indonesia and other countries. Several important provisions in this law include the grounds that must be met to carry out extradition, the types of crimes that can be extradited, and the administrative procedures that need to be carried out.

Article 2 paragraph (1) states that "extradition may only be carried out based on an agreement between the Republic of Indonesia and a foreign country, except in certain cases based on the principle of reciprocity". This provision emphasizes that extradition can only be carried out if there is an agreement that binds both countries or there is a reciprocal agreement that allows it. This is a challenge in itself considering that Indonesia does not yet have an extradition agreement with all

countries in the world, which results in obstacles in dealing with criminals who flee to countries without such agreements.

Furthermore, Article 3 regulates the types of crimes that can be used as a basis for extradition, stating that "extradition can be carried out against perpetrators of crimes that carry a minimum sentence of one year or more, as well as criminal acts that are considered serious and endanger the common interest". Thus, crimes such as narcotics, terrorism, and human trafficking that have a wide impact can be the main reason for requesting extradition. However, not all countries have the same regulations regarding the types of crimes that are eligible for extradition, which often causes legal conflicts between the countries involved.

In this case, Article 4 explains the reasons for refusing extradition. The article states that "extradition will not be made if the request concerns a political crime or a military crime". This means that perpetrators of crimes charged on political grounds will not be extradited to another country.(Absah et al. 2024)This rule applies internationally and is often an obstacle, especially in cases involving subjective political or military allegations. For example, someone accused of political activity in a particular country may be granted protection by Indonesia if the extradition request is seen as part of political persecution.

Indonesia also faces challenges in terms of human rights related to extradition. Article 5 states that "extradition shall not be carried out if it will result in the perpetrator being exposed to the threat of the death penalty or torture that violates human rights". This principle has also been adopted by various countries, including Indonesia, to ensure that the extradition process does not conflict with human rights protections. This means that if the requesting country has the threat of the death penalty or legal conditions that allow for torture, Indonesia has the right to refuse the extradition request. However, this also becomes a dilemma when the crimes committed are very serious and have wide-ranging impacts.(TAUFIK 2019)

Furthermore, this law also covers the procedures and administrative stages in submitting an extradition request. Article 14 states that "an extradition request must be submitted through diplomatic channels and accompanied by supporting documents such as evidence of the crimes committed by the perpetrator". This diplomatic channel is necessary so that the extradition process runs in accordance with the principles of international law and continues to respect the sovereignty of the countries involved.(Absah et al. 2024)

In addition to Law No. 1 of 1979, Indonesia is also bound by several international conventions related to transnational crime and extradition. For example, the United Nations Convention Against Transnational Organized Crime which regulates cooperation between countries in combating transnational crime. This convention requires participating countries to provide mutual legal assistance in the investigation, prosecution, and legal action against perpetrators of transnational crimes, including through extradition.(Sompotan 2016)

However, the biggest challenge faced in implementing extradition is the difference in interpretation of the regulations among the countries involved. For example, countries that do not have diplomatic relations with Indonesia or do not have an extradition treaty can reject an extradition request. In addition, different human rights principles in each country often become an obstacle in fulfilling extradition requests. Therefore, international cooperation is very important in increasing the effectiveness of the implementation of extradition, especially through efforts to establish bilateral or multilateral extradition treaties.

To strengthen the extradition process and criminal law enforcement against transnational crimes, Indonesia needs to continue to develop policies and regulations that are in accordance with

international standards and strengthen cooperation with other countries. With a broader extradition agreement, Indonesia can be more effective in combating transnational crimes and ensuring that perpetrators cannot take refuge in other countries.(2014)

This study aims to understand how regulations and legal mechanisms in Indonesia face the increasingly complex challenges of transnational crime, and how extradition can be implemented effectively in criminal law enforcement. The main questions in this study include:*First*, how are the legal provisions in Law No. 1 of 1979 concerning Extradition applied in dealing with transnational crimes in Indonesia, especially in the context of international collaboration and the influence of bilateral agreements?*Second*, how can the challenges faced in implementing extradition in Indonesia, including barriers to human rights, differences in legal systems, and issues related to jurisdiction, be effectively addressed to ensure that transnational criminals do not escape legal responsibility?

METHOD

The methodology of this research uses a normative legal approach by reviewing laws and regulations, legal principles, and relevant literature related to transnational crimes and extradition. Primary data sources include Law No. 1 of 1979 concerning Extradition and international conventions related to law enforcement for cross-border crimes. Secondary data is obtained from books, journals, and scientific articles that support legal analysis in the context of comparison and implementation of extradition in various countries.(Indra Utama Tanjung 2024)

Data analysis was conducted using a descriptive-analytical method, where this study describes existing regulations and analyzes their effectiveness in law enforcement practices. This study also identifies obstacles in the implementation of extradition in Indonesia and evaluates the principles that need to be improved to strengthen the criminal law mechanism in dealing with transnational crimes.

RESULTS AND DISCUSSION

Implementation of Legal Provisions in Law No. 1 of 1979 Concerning Extradition in Dealing with Transnational Crimes in Indonesia, Especially in the Context of International Collaboration and the Influence of Bilateral Agreements

In dealing with transnational crimes, Law No. 1 of 1979 concerning Extradition in Indonesia is one of the important instruments that regulates the procedure for handing over individuals wanted by other countries to be tried or sentenced. Extradition becomes important when cross-border crimes continue to increase along with globalization, which facilitates criminal activities, both in drug trafficking, financial crimes, terrorism, and cybercrimes. The need for extradition becomes even more crucial when transnational criminals try to flee from one jurisdiction to another that does not necessarily have strong legal cooperation. Therefore, Law No. 1 of 1979 plays a role in regulating the mechanisms, limitations, and conditions under which extradition can be carried out, both based on bilateral extradition agreements and the principle of reciprocity between countries.

This law states in Article 2 paragraph (1) that “extradition may only be carried out based on an agreement between the Republic of Indonesia and a foreign country, except in certain cases based on the principle of reciprocity”. Thus, Indonesia can only carry out extradition if there is an agreement with the requesting country, or on the basis of a reciprocal agreement under certain conditions. This aspect shows the importance of bilateral extradition agreements in ensuring a clear legal framework

for extradition, considering that each country has a different legal system and policy. In a global context, efforts to enforce the law against transnational crimes without an agreement often face challenges. Bilateral agreements are a crucial instrument to close legal loopholes that transnational criminals may exploit to escape.

Indonesia currently has extradition treaties with a number of countries, including Malaysia, the Philippines, Thailand, and Australia, all of which regulate the requirements for extradition and the types of crimes that are subject to extradition. These bilateral treaties allow for a faster and more effective extradition process due to mutual agreement on clear legal mechanisms and administrative procedures. However, the limitations of Indonesia's bilateral extradition treaties with several other countries often become an obstacle in enforcing the law against perpetrators of crimes who flee to countries without extradition treaties. In this condition, the provisions of Article 2 paragraph (1) allow for the principle of reciprocity for certain cases, but the absence of a formal agreement often results in a long and complicated process.

In practice, Article 3 of Law No. 1 of 1979 stipulates that "extradition may be carried out against perpetrators of criminal acts whose criminal threat is at least one year or more, as well as criminal acts that are considered serious and endanger the common interest". This shows that serious crimes such as narcotics, money laundering, terrorism, and human trafficking can be used as the basis for extradition requests, because these crimes have a wide impact and pose a threat to public security.(Aksha, Hadiyanto, and Ciptono 2024)Transnational crimes like this often involve more than one country, so they require strong international collaboration in handling them. In the case of narcotics, for example, Indonesia has tried to work with several countries to tighten border controls and catch the main perpetrators, who often evade by taking advantage of different legal jurisdictions.

However, the extradition process often faces various challenges in its implementation. One of the main obstacles is the issue of state sovereignty, where each country has the right to reject an extradition request if it is considered to violate the principle of its sovereignty. In this context, Article 4 of Law No. 1 of 1979 stipulates that "extradition will not be carried out if the request concerns a political crime or military crime". This provision applies to protect perpetrators accused of committing crimes based on political or military reasons, which may be viewed as a form of persecution or legal injustice in the requesting country. However, this limitation is often exploited by perpetrators of crimes who try to hide behind political reasons to avoid criminal prosecution for their actions.(Darmono 2012)

In addition, human rights factors are also a concern in the implementation of extradition. Based on Article 5, it is stated that "extradition may not be carried out if it will result in the perpetrator being faced with the threat of the death penalty or torture that violates human rights". This provision serves to protect the basic rights of perpetrators of crimes and ensure that they do not face punishment that violates internationally recognized human rights standards.(Silvia 2020)Indonesia has implemented this principle by refusing extradition to countries that threaten the death penalty or inhumane detention conditions. However, challenges arise when the crimes committed are very serious, such as terrorism or murder, which in some countries still carry the death penalty.

On the other hand, the success of implementing extradition provisions also depends on the quality of international collaboration. On various occasions, Indonesia has collaborated with several countries to strengthen the extradition process and exchange of information needed in the investigation of transnational crimes. Through bilateral agreements and participation in international organizations, such as Interpol, Indonesia can access data and assistance from partner countries in tracking and arresting perpetrators of crimes.(Mauldiyani and Prasetyo 2024)However, there are still

obstacles in terms of differences in legal procedures between countries and slow administrative processes that often hamper the extradition process. This collaboration also includes technical assistance, joint law enforcement, and intelligence sharing that can significantly support efforts to combat transnational crime.

As cases of transnational crime increase, the urgency for a broader bilateral extradition agreement becomes more urgent. One of the main obstacles in handling transnational crime is the limited extradition agreements Indonesia has with countries that are often the destinations for criminals to flee. In this situation, Indonesia is often forced to conduct ad hoc negotiations with these countries, which is time-consuming and sometimes causes diplomatic conflicts. Therefore, diplomatic steps to expand bilateral extradition agreements are urgently needed so that Indonesia can ensure that perpetrators of cross-border crimes can be tried in accordance with applicable laws.

Challenges Faced in the Implementation of Extradition in Indonesia, Including Barriers to Human Rights, Differences in Legal Systems, and Issues Related to Jurisdiction, Can Be Addressed Effectively to Ensure That Transnational Criminals Do Not Escape Legal Responsibility

The implementation of extradition in Indonesia for transnational crimes faces various challenges involving human rights aspects, differences in legal systems between countries, and jurisdictional limitations. These challenges not only affect the success of extradition, but also affect the international cooperation needed to address transnational crimes. As one of the countries that upholds the principle of human rights in its legislation, Indonesia faces a dilemma when asked to extradite perpetrators who may face the death penalty or inhumane treatment in the requesting country. (Rofiqoh, nd) Based on Article 5 of Law No. 1 of 1979 concerning Extradition, it is stated that "extradition may not be carried out if it will result in the perpetrator being faced with the threat of the death penalty or torture that violates human rights". This makes human rights a determining factor in accepting or rejecting an extradition request, so Indonesia needs to conduct an in-depth check on the legal system of the requesting country.

However, this principle often conflicts with the need to effectively enforce the law against transnational criminals. For example, in cases of terrorism or drug trafficking, many requesting countries apply the death penalty as a form of severe punishment. This condition is a major obstacle, because on the one hand Indonesia wants to ensure that the perpetrators face the law, but on the other hand it must respect human rights standards. As a solution, several countries that do not support the death penalty impose conditions that the requesting country does not apply the death penalty to individuals who are extradited. Indonesia can implement similar steps in bilateral extradition treaties, which allow for extradition without violating humanitarian principles. (Iskandar and Nugroho 2024)

In addition to human rights barriers, differences in legal systems between Indonesia and the requesting country also pose a major challenge in extradition. (Gumelar 2023) Each country has different definitions, legal procedures, and standards of proof in dealing with crimes. For example, a crime that is considered serious in Indonesia may not be considered the same in another country, as well as differences in standards of proof and court processes. For example, Article 3 of Law No. 1 of 1979 states that "extradition can be carried out against perpetrators of criminal acts whose criminal threat is at least one year or more, as well as criminal acts that are considered serious and endanger the common interest". This provision serves as a guideline in assessing whether an extradition request is worthy of being fulfilled. However, the implementation of extradition will be difficult if the

requesting country has a different category of crime or does not meet the same requirements as Indonesian law.

Another equally important obstacle is the issue of jurisdiction. When transnational criminals move between regions, the complexity of jurisdictions involving two or more countries can hamper the extradition process. Indonesia recognizes the principle of state sovereignty, and Article 2 paragraph (1) of Law No. 1 of 1979 emphasizes that “extradition may only be carried out based on an agreement between the Republic of Indonesia and a foreign country, except in certain cases based on the principle of reciprocity”. This requirement demands official international cooperation or at least a reciprocal agreement to be able to process extradition requests. However, in cases of crimes involving multiple countries, conflicting jurisdictions and legal authorities often result in perpetrators being able to escape punishment, especially when there is no binding extradition agreement between the countries involved.(Zhafirah 2024)

To address these challenges, Indonesia needs to strengthen diplomatic efforts to establish bilateral extradition treaties with more countries and actively participate in international forums such as Interpol. This will allow Indonesia not only to expand the scope of extradition but also to increase collaboration in sharing intelligence and evidence to support the legal process. Thus, obstacles related to jurisdiction and differences in legal systems can be reduced. In addition, drafting extradition treaties that include specific provisions on human rights can be an effective solution to ensure that extradition respects the basic rights of perpetrators while meeting the needs of law enforcement.(Hartono et al. 2023)

CONCLUSION

In conclusion, the implementation of Law No. 1 of 1979 on Extradition in Indonesia shows the importance of international collaboration and bilateral agreements in combating transnational crime. Although this law provides a basic framework for extraditing transnational criminals, the main challenges faced are differences in legal systems, limitations of extradition agreements, and constraints related to human rights and jurisdiction. Efforts to strengthen the extradition network through bilateral agreements and strengthening commitments in international organizations such as Interpol can help Indonesia be more effective in capturing and punishing criminals who flee abroad.

To overcome the barriers to extradition involving human rights issues and differences in legal principles, a more adaptive approach is needed by including specific clauses in extradition treaties. This will allow Indonesia to fulfill humanitarian principles while enforcing the law effectively. Going forward, by expanding extradition treaties and aligning policies with international standards, Indonesia can increase its legal resilience in dealing with transnational crime and ensure that perpetrators cannot escape legal responsibility.

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