

Reformulation of Extradition for Cross-Border Crimes in the Era of Globalization (Case Study of Citizens of the People's Republic of China and Taiwan)

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Abstract

Indonesia's extradition laws, particularly Law No. 1 of 1979, face challenges in the globalization era, especially with cross-border crimes involving citizens from China and Taiwan. The current civil law and administrative procedure system allows for significant government subjectivity, unlike common law systems that prioritize due process and judicial decisions, where individuals can refuse extradition. This was evident in Indonesia's rejection of Taiwanese citizens' extradition to China and Hendra Rahardja's refusal from Australia, highlighting the need to curb politically motivated or unjust refusals. Therefore, reform of Extradition Law No. 1 of 1979, specifically Article 14, is crucial. This reform should enhance legal certainty, reduce subjectivity, and uphold national sovereignty and justice principles. It must also embrace a "living law" concept, aligning with societal values and ensuring practical benefits. Furthermore, Indonesia should actively champion an ASEAN extradition convention with common standards, particularly for sophisticated cybercrime, drawing inspiration from the European Union's model.

I. Introduction

This journal wants to discuss the matter of "Reformulation of Extradition

on State Border Crime in The Globalization Era” with a Case Study of Citizens of the Republic of China and Taiwan caught in Indonesia. By providing an overview of the face of law in Indonesia, which cannot be separated from local legal norms, even though it is within the scope of globalization, where international law is one of its legal sources, using normative juridical methods with qualitative juridical analysis.

Stepping into the era of globalization, the world is witnessing an increasingly open world. Whether we like it or not, it forces the Government of Indonesia to take an active role in protecting its people and striving for lasting world peace¹. As a manifestation of the mandate of the Preamble of the 1945 Constitution, which states;

“Then from that, to form an Indonesian State government that protects all Indonesian people and protects all Indonesian blood spills, and to promote general welfare, educate the nation’s life, and participate in carrying out world order based on independence, eternal peace”.

Therefore, Indonesia's cooperation with various countries, especially cooperation in the fields of criminal law, civil law and state administration, is inevitable following the various forms, modes, and variants of crimes that continue to develop; such as terrorism, corruption and trafficking which are increasing, supported by technological advances and globalization.

Indonesia already has a strong legal basis on extradition, namely Law No. 1 of 1979 concerning Extradition, which was later enhanced by Law No. 5 of 2014. In addition, in fact, the Dutch East Indies government at that time had also ratified the International Convention on Extradition in 1933, but after independence, Indonesia ratified the Landmark Asian Convention in 1976 and then continued to improve existing legislation (positive law).

Referring to the definition of extradition in Article 1 of Law No. 1 of 1979, it is stated, what is meant by Extradition, the surrender by a country to a country that requests the surrender of a person suspected or convicted of committing a crime outside the territory of the surrendering state and

¹ Sumanto Al Qurtuby (2023). Beyond Liberal Peace: Religious Violence and Tactical Peacebuilding in Indonesia. *Journal of Asian Security and International Affairs*, 10(2), 145-168.
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within the territorial jurisdiction of the requesting state, as it is authorized to try and punish him. While in Balcks Law states,

"Extradition, The Official Surrender of an alleged criminal by one state or nation to another jurisdiction over the crime charged: the return of a fugitive from justice regardless of consent, by the authorities where the fugitive recides".

Extradition is the surrender of a criminal by a foreign country to the country authorized to prosecute him². This surrender is made at the request of the authorized state. This means that if a foreign national such as China, Taiwan or other foreigners commit a crime in their country, or commit a crime within the jurisdiction of another country, extradition or delivery of the person can be requested based on a request, but there is no absolute obligation of the requested country to fulfill it.

Prof. Romli Atmasasmita quoted Grotius and Vattel as saying that extradition is a state obligation. The state must prosecute and punish criminals, or hand over the person concerned to the interested country. Vattel and Grotius differed in terms of punishment. Grotius emphasized that extradition is a moral obligation of a state, from the requesting state, while Vattel extradition is a legal obligation of a state based on international law³. There is another opinion from Pufendorf that says, extradition is an "imperfect obligation", a "pseudo" obligation that requires togetherness to implement international law fully and effectively.

The latter opinion seems to be one of the philosophical bases in the making of the National Extradition Law, where the word pseudo indicates, even though there is already a law and a treaty policy to ratify, including ratifying international Conventions, but no country can eliminate the sovereignty of a country, as referred to in Article 14 of Law No. 1 of 1979, namely the extradition request is rejected, if according to the competent authority there are strong enough suspicions; That the person for whom extradition is sought will be prosecuted, convicted or otherwise punished for reasons relating to his religion, political beliefs or nationality, or because he belongs to a particular ethnic or population group.

In the case of foreigners from China and Taiwan who committed crimes

² Andi Muhammad Sofyan & Nur Azisa (2023). *Hukum Pidana Indonesia*. Jakarta: Prenada Media.

³ Romli Atmasasmita. (2011). *Hukum tentang Ekstradisi*. Jakarta: Fikahati Aneska

from the jurisdiction of Indonesia qq on the island of Bali, 103 foreigners terrorized and sciming citizens living in Malaysia, but the Indonesian government did not give Taiwanese foreigners extradition to China, because there was a suspicion that the court would not be based on impartiality, but based on political differences. Whereas Indonesia has an Extradition treaty with mainland China (PRC). Thus, Indonesia is not subject to the treaty, so it is necessary to reformulate the Extradition Law to provide certainty to all people not based on suspicion, or based on state morals, but it is necessary to formulate an article that Indonesia has legal sovereignty to determine its attitude, to refuse or accept extradition requests from the requesting country.

This was also experienced by the Government of Indonesia when requesting the fugitive from corruption Hendra Rahardja to the Australian Government, but Australia did not fulfill the request because Australia did not believe that Hendra Rahardja would be tried fairly by the Indonesian State Court. Similarly, Thailand requested the extradition of Thaksi Sinwatra who resides in Cambodia. The Cambodian government considered Thaksi to be an asset to Cambodia⁴.

How to formulate the Extradition Law and international extradition agreements for foreigners who commit crimes within the jurisdiction of Indonesia? The reformulation will become important considering the increasingly varied forms of crime supported by technological advancements and the globalization of the economy and politics, such as money laundering, corruption, and trafficking, which exploit technological advancements and globalization.

2. Research Method

In scientific writing, the main requirement is the methodology in its preparation. It's like someone wants to cut a fruit, using a sharp knife or a saw. Of course, a sharp knife will be chosen. In this writing, a normative juridical methodology is used⁵, which is carried out through literature studies by examining primary legal materials in the form of laws and regulations, international conventions/agreements, and secondary and tertiary legal materials. Secondary

⁴ Atmasasmita, R. (2011). *Hukum tentang Ekstradisi*. Jakarta: Fikahati Aneska

⁵ Suganda, R. (2022). Metode Pendekatan Yuridis dalam Memahami Sistem Penyelesaian Sengketa Ekonomi Syariah. *Jurnal Ilmiah Ekonomi Islam*, 8(3), 2859-2866.

legal materials in the form of research results, studies, scientific magazines, and tertiary legal materials in the form of dictionaries⁶.

This normative juridical research is also called doctrinal research by Prof. Suteki, namely, reading and analyzing available documents, including international treaties that have become sources of national law. Doctrinal theory is the same as positive law from John Austin's perspective. The author also compares the laws and regulations between Indonesia and China in order to obtain enrichment and additional literacy, then collected and analyzed using qualitative juridical analysis, namely descriptive and perspective data analysis based on theories, principles, teachings in law, especially in bilateral agreements within the framework of international agreements.

3. Results and Discussion

Law as Renewal

In the old theory, the source of law came from God, and human thinking at that time was still marginalized, because in natural law, it was considered universally applicable. The thought of natural law originating from God was developed by, among others, Thomas Aquino, Gratianus, John Salisbury, Dante, and Pierre Dubois. At that time, his teachings were influenced by religious teachings to interfere with the power of kings who wanted to rule without obstacles or obstacles from religious circles⁷.

The conflict between the idea of natural law that comes from God and the law that develops from human thought continues to strengthen. Many stories, politicians, and philosophers at that time were made enemies, imprisoned, and even had their books burned. Such a law is known as positive law, which is the current law, although it is rigid, but it is considered to have certainty so that until now it is still widely treated by countries that adhere to the codification of civil law⁸.

In this era of globalization and high technological advancement, the law is no longer static. Therefore, it is appropriate for Prof. Dr. Mochtar Kusumaatmadja to reformulate the living law, as the law needs to compensate for societal norms, elevated one octave to become law as one of the media for social engineering or

⁶ Suteki & Taufani, G. (2020). *Metodologi Penelitian Hukum: Filsafat, Teori dan Praktik*. Depok: Rajawali Pers.

⁷ Rasjidi, L & Rasjidi, L.S. (2012). *Dasar-Dasar Filsafat dan Teori Hukum*. Bandung: Citra Aditya Bhakti.

⁸ Abduh, R. (2020). *Buku Ajar: Hukum Perdata dalam Yurisprudensi*. Deli Serdang: PT Bunda Media Grup

what is often referred to by the Padjajaran University school of thought, law as a means of development. The reformulation of law to engineer development is still relevant today as a guide for discussing various legal provisions, including extradition regulations in Indonesia.

Prof. Mochtar Kusumaatmadja's thoughts on law as a tool for development⁹. The essence of Mochtar's thinking, as outlined in his book, *Introduction to Legal Studies*, is to distinguish between function and purpose. The function of law guarantees order and discipline. That means, without both of them, people no longer dare to leave their homes, do not dare to work or develop themselves to move outside their homes because there is chaos, disorder, or uncertainty in society. Therefore, in order for the function of law to work well, certainty is needed through laws or regulations that contain commands, prohibitions, and sanctions for those who violate them. This is called positive law, which is created and justified in the name of the state, allowing the government to enforce these rules indiscriminately, without regard for societal norms, religion, and propriety.

Theory of Relative Sovereignty

In a country, the theory of relative and absolute sovereignty is recognized. Sovereignty is the absolute and eternal power possessed by the state, and it cannot be divided. The sovereignty of the state is defined as having the highest or top degree that can be manifested as the sovereignty of the people. According to traditional views, state sovereignty is not limited to the power to control a certain territory from external invasion¹⁰. But furthermore, this sovereignty also leads to the right of the state to determine the political structure, social status, and economic and cultural systems without being interfered with by other parties.

Power that seems unlimited is called absolute sovereignty. Unless the power is limited by a certain period, or specific time frames, such as 4 to 5 years in one term. In essence, both power and territorial boundaries have limited rights, including subjugation to international law and all forms of bilateral agreements. Thus, such state sovereignty can be referred to as relative sovereignty because everything will end with time and the system created through legislation that compensates the desires of society (the living law). Just like in determining policies related to extradition.

⁹ Nurnazli. (2019). Analisis Putusan Mahkamah Agung tentang Pembagian Harta Bersama dan Implikasinya terhadap Pembaruan Hukum Keluarga di Indonesia. *Dissertation*. Universitas Islam Negeri Raden Intan Lampung. Lampung.

¹⁰ Pugu, M. R. (2025). *Keamanan Non-Tradisional*. Jambi: PT. Sonpedia Publishing Indonesia.

Extradition, in Romly Atmasasmita's view, is part of international law. This means that Indonesia is subject to international law, even making international law one of the sources of national law. Among the implementations, Indonesia created various legal frameworks such as Law No. 1 of 1979, which was enacted on January 18, 1979, and repealed the enforcement of Koninklijk Besluit Van 8 Mei 1883 No 26 Staatsblab 1883 concerning the Extradition of Foreigners, which had been in effect for 96 years since the Independence of the Republic of Indonesia¹¹.

In the academic manuscript of the Draft Extradition Law No. 1 of 1979 presented by the National Law Development Agency (BPHN), the law was deemed necessary to provide a legal basis for making agreements with foreign countries as well as for extraditing someone without an agreement. Regarding extradition, it is mentioned that the concept of sovereignty places the state as the holder of the highest power within its territory. Sovereignty is one of the fundamental concepts in international law. This means that each country is subject to only one type of law, namely the law of the country that has sovereignty over its territory. Therefore, the jurisdiction of other countries cannot be applied to it.

Creating Adaptive Law

Indonesia is a state of law; it is stated in Article 1, paragraph (3) that Indonesia is a State of Law. This means that all authority must be run by existing laws and regulations or have been created so as not to make the state a chovinesm. Some countries that have embraced chauvinism, namely the state is determined by a dictatorial ruler, such as Germany during the time of Adolf Hitler, Italy during the time of Benito Mussolini, Japan during the time of Tenno Heika or Emperor Hirohitto. All countries at that time were not based on democratically made constitutions, but rather on the wishes of a leader. The world and many countries, including Indonesia, need to stay away from such things; the teachings of tyranny are not beneficial to the people or neighboring countries¹².

The opinion of Prof. Moh. Mahfud MD, quotes the opinion of Nonet and Selznick, who divide the character of the law into two, namely, the law is responsive and the second is orthodox. Or another term from Marryman, law is autonomous and oppressive. Both opinions have the same substance. Nonet and Silznick said that legal configuration is difficult to separate from power and politics. If a ruler can compensate all political parties under his control, in other words, minus the

¹¹ Kelsen, H. (2014). *Teori Umum tentang Hukum dan Negara*. Bandung: Nusa Media.

¹² Rousseau, JJ. (2023). *The Social Contract (Kontrak Sosial)*. Bantul: Anak Hebat Indonesia.

opposition, then the ruler's will will be accommodated by politicians who are involved in supporting parties. In Indonesia, there seems to be a tendency for a president to invite all parties as his supporters to make all legal products as he wants¹³.

Nonet's opinion is still relevant today, because in the vision of a president, the most important thing for the state to create the function and purpose of law is stability. In the name of a, we must create stability, with a stable state, the community will be able to work well, there is no sense of fear, even though the race of justice can also be neglected, for example, the control of economic access is difficult to reach by the wider community. While the face of responsive or autonomous law, the opposite of the orthodox legal system. The face of responsive law, as explained by Abdul Hakim Garuda Nusantara, states:

"... a set of attitudes about the nature of law, the role of law in society and government, the organization and operation of the legal system, and the way law is made, applied, studied, refined, and thought about that are all deeply rooted in and conditioned by the history of society."

With this model, it will be realized that law-making involves the wider community, because the law should be intended for the community, not the community intended by the law. That is, the law must be produced and grown from the community, not to punish the community. Such law-making is currently being developed by many legal scholars because in essence, the law is not only based on certainty, stability, and justice but also on the existence of benefits to the community¹⁴.

Extradition Laws and Treaties

There are at least three considerations for the birth of Law No. 1/1979 on Extradition: 1 Year 1979 on Extradition. First, the Preamble of the 1945 Constitution states

"... to protect the entire Indonesian nation and the entire Indonesian homeland, to promote public welfare, to educate the

¹³ Mahmodin, MM. (2020). *Politik Hukum di Indonesia*. Depok: Rajawali Pers.

¹⁴ Hamidah, N. (2024). *Perlindungan Hukum terhadap Lingkungan Hidup di Kawasan Bromo Berdasarkan Undang-Undang Nomor 5 Tahun 1990 tentang Konservasi Sumber Daya Alam*. Thesis. Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember.

nation's life and to participate in the implementation of world order based on eternal independence."

This means that Indonesia has a moral responsibility to protect its citizens and actively participate in the international arena, realizing peace and order.

Secondly, to anticipate, arrest, and prosecute the perpetrators of crimes who try to flee to other countries, to avoid the law of the country where he (the perpetrator) committed the crime, for example some Chinese citizens commit crimes in Indonesia. The crime began to be sniffed out by the legal apparatus, then the cyber criminals were ready to leave Indonesia to avoid legal snares. In this era of globalization, a legal institution called extradition is very important¹⁵.

Third, the existence of the UN Vienna Convention which, among others, states, Article 27 on International Treaties (UN Convention on the law of the treaty) in 1969, extradition requests must be fulfilled, as an absolute obligation for the country requested for extradition. In paragraph two, the implementation of extradition of criminals, Indonesian practice follows the provisions and mechanisms as specified in Law No. 1 of 1979 concerning Extradition.

This law was born, intended to provide a legal basis for conducting agreements with foreign countries. This law also regulates the procedures for extradition requests by the Indonesian government to foreign countries, so that many extradition laws are made under the legal umbrella of Law No. 1 of 1979. The general provisions of Article 1 of the Act state,

"... what is meant by Extradition is the surrender by a state to a requesting state of a person suspected or convicted of committing a crime outside the territory of the surrendering state and within the jurisdiction of the territory of the requesting state, because it is authorized to prosecute, try, and punish. Within the territorial jurisdiction of the requesting state, as it is authorized to try and punish him".

This means that if a citizen of another country commits a crime within their country or another country and then flees to Indonesia, the government is obliged to extradite that person based on that request. However, in other articles, the Indonesian government will not always comply with the requesting country, because in other articles regulating political cases, political views by a person are

¹⁵ Maringka, J. S. (2022). *Ekstradisi Dalam Sistem Peradilan Pidana*. Jakarta; Sinar Grafika.

not included in the obligation to extradite a person.

Article 5 which consists of 4 points states; (1) Extradition is not carried out against political crimes and paragraph (3) explains, against certain types of political crimes the perpetrators can also be extradited as long as an agreement is made between the Republic of Indonesia and the country concerned. Thus, only ordinary crimes can be extradited to the requesting country. In relation to politics, there is a need for special cooperation, although it is not absolute.

In a particular case, Indonesia did not grant China's request when the Chinese government asked for Taiwanese citizens who conspired with Chinese citizens to commit cyber crime from Bali against Malaysian citizens.

When the syndicate was arrested, there were groups of foreigners from Malaysia, China, and Taiwan. CNN on 06/29/2024 said that those who will be arrested will be deported to their respective countries. Although there is a request for Taiwanese foreigners to be returned to China, just like other Chinese citizens, the Indonesian government has the authority to deport them to each country even though Indonesia does not explicitly recognize Taiwan as a state entity.

Reporting from the Taiwan news agency (CNA) (26/9/24) Taiwan President Lai Ching te is very concerned about cross-border crimes committed by its citizens. Therefore, he gave appreciation to the Executive Yuan's anti-fraud agency (CIB), which was able to negotiate with international police so that it could repatriate more than 100 of its citizens.

The President gave appreciation to the CIB team for being able to repatriate or extradite its citizens to Taiwan with the Indonesian Police well. This means that although Taiwan is de jure not recognized as a country, the existence of Taiwanese citizens is recognized by Indonesia, even though it does not have the umbrella of extradition cooperation between the two countries.

The return of foreigners to their respective countries is based on Article 14 of Law No. 1 of 1979 which states, Extradition requests are rejected, if according to the competent authority there is a strong enough suspicion that the person whose extradition is requested will be prosecuted, convicted, or subjected to other actions for reasons related to his religion, political beliefs, or nationality, or because he belongs to a certain ethnic group or population group.

This means that even though Indonesia does not explicitly recognize Taiwan as a

separate state entity, not within the unity of the PRC, the Indonesian government can or dares to reject it at the request of the Chinese government, even though Indonesia and China have an Extradition Treaty, not with Taiwan.

Legal reformulation is needed with the improvement of one of Article 14 in Law No. 1 of 1979 which affirms, the Indonesian Government protects citizens of other countries as long as they have their national identity even though the country in question rejects it, such as Taiwan in the eyes of mainland China and Palestine in the eyes of Israel.

With this intention, the law in Indonesia not only has certainty value, but also adopts the living law, the law desired by the community, whose purpose and function can make all humans happy, because the law is to humanize, not to oppress people. In addition, the reformulation of the Extradition Law should not only develop a ratification agreement model, but also the government can encourage Asean countries to make Conventions, rules that have common standards and can be implemented by each country, as well as Conventions related to the prevention of Cyber Crime in Western European countries or the European Union (EU).

4. Conclusion

Indonesia follows a civil law system, meaning its extradition policies are heavily influenced by government decisions, with the final say resting with the President after input from the Chief Justice of the Supreme Court and the Minister of Law and Human Rights. This is known as the administrative procedure, where subjective factors in state policy and the principle of state sovereignty play a significant role. This contrasts with common law systems, like those in England, America, and former British colonies, where judicial procedures prioritize due process of law and court decisions determine extradition. In these systems, individuals can refuse extradition, as seen in the case of Hendra Rahardja, who successfully resisted extradition from Australia to Indonesia despite facing corruption charges.

The text suggests that Indonesia's current extradition law (Law No. 1 Year 1979) needs reform to reduce the subjectivity of state officials in approving or rejecting extradition requests. It also highlights the importance of Indonesia's role in establishing extradition conventions among ASEAN countries to improve the handling of cybercrime in the era of globalization, similar to how the European Union operates through conventions among its member states.

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