

Examination of Extradition Applications in Criminal Law Enforcement Efforts in Indonesia

I Gde Eka Haryana¹

¹*Faculty of Law, National Development University "Veteran" Jakarta, Indonesia*
Corresponding Email: higdeeka7479@gmail.com

Abstract

The purpose of the study is to know examination of extradition applications in criminal law enforcement efforts in Indonesia. One example of a case that occurred in Indonesia related to extradition and which is the object of research in this thesis is the decision Number 369/PID.SUS/2020/PT.DKI.JKT jo. No. 104/Pid.C.Extradition/2020/PN.Jkt.Sel with the name of the extradition defendant Gyu Min Lee alias Lee Gyu Min alias Lee Shiwoo. A person suspected of committing a crime in a country may flee to another country, including Indonesia. In order to take legal action against criminals who have fled to other countries, it is necessary to have cooperation between countries for the surrender of criminals, which is known as extradition. The request for extradition from the government of another country to the Government of the State of Indonesia does not always have to be granted, but it is necessary to carry out several examinations to determine whether or not the person can be extradited to the requesting country. Although there are already laws and regulations governing extradition, there are still many things that have not been clearly regulated regarding the process of examining extradition cases to the court so that they can hinder the process of examining the extradition respondent until there is a presidential decision on whether or not extradition can be carried out. against extradition terms.

Keywords: Law, Extradition Applications, Criminal Law

Introduction

The rapid progress of science and the development of the world, which is marked by the flow of information technology, is increasingly increasing the intensity of relations between countries [1]. In the development of globalization which is marked by advances in technology and information and communication, it not only brings benefits, but is also used as an opportunity to commit cross-border crimes. Sovereign states have exclusive jurisdiction within their territory, which is known as territorial sovereignty. The state has full jurisdiction to punish anyone who commits a crime that violates the law in its territory. However, in many cases, perpetrators have escaped accountability proceedings in the jurisdictions of other countries [2].

The Republic of Indonesia is subject to international law with clear boundaries and its own government, and always cooperates with international criminal and civil law to realize national ideals in developing relations between nations in accordance with paragraph 4 of the Preamble to the Constitution of the Republic of

Indonesia. 1945. The impact of the dynamic development of science and technology has an impact on crime throughout the world, which leads to crimes that occur across national borders [3].

The development of international criminal law initially allowed three types of international crimes: war crimes or war crimes, genocide or certain crimes of ethnic cleansing, and aggression [4]. An international crime can be defined as a form of criminal activity that is considered harmful to the international community as a whole, and any judicial authority in any country, including international courts, has the power to investigate and prosecute perpetrators [5]. The Government of the Republic of Indonesia makes various efforts to implement foreign policy for the national interest, such as entering into agreements with other countries, international organizations, and other subjects of international law.

The impact of technological developments and globalization will also affect the world of crime, where crime occurs across national borders. These crimes need to be countered by existing laws. However, differences in domestic law preclude prosecution of crimes committed

internationally. Oppenheim distinguishes the notion of international delinquencies from international crimes. The notion of international delinquencies is recognized in customary international law and the notion of international crimes is related to the structure of international law [3].

In everyday life, after committing a crime in the territory of a country, there are criminals who flee to the territory of another country and stay there for a long time to avoid prosecution from the country that committed the crime. In such cases, countries that have criminal justice systems to try criminals have problems prosecuting criminals. Based on examination by the legal system of the police, prosecutors, courts, and others [6].

The definition of extradition is the reciprocal principle of the accused or the convicted country which has been or has been violated (the accused or the accused) based on the extradition treaty that was made previously. As for the opinion of M Cherief Bassiouni regarding extradition, namely a legal process based on an agreement, reciprocity, respect, or national law, where one country gives or sends to another country, a person who is accused or convicted of a crime against the law of the country requesting or who violate international criminal law to be tried or punished in the requesting country in respect of the crimes stated in the request [7].

Vattel considers extradition to be a purely legal obligation imposed on countries under international law in the event of a serious crime. Vattel's views are supported by various authors such as Hanecius, Rutherford, Schmelzing and Kent. Proponents of a view that contradicts the above view, such as Pfendorf, see submission only as an incomplete obligation to seek special assistance to achieve the full and effective implementation of international law [8].

Extradition then becomes a matter related to law enforcement on a crime. Extradition comes from the Latin *extradere* (verb) which consists of the words *ex* which means to go out and *tradere* which means to give (to surrender), with the noun *extradio* which means surrender. The term extradition is better known or usually used especially in the surrender of criminals from a country to the requesting country. State sovereignty can only be exercised in its territory or territory and will end when it has started in the territory or territory of another country [9]. Even though a country already has judicial jurisdiction or the authority to try someone

based on the principles of jurisdiction in international law, the state cannot simply do it when the person is already in another country. For this reason, in etiquette and international relations, a request for extradition is required from the requesting state to the requested state. Thus the limitations of territorial sovereignty can be bridged through cooperation with other countries for the law enforcement process. The oldest cooperation in the application of jurisdiction or law enforcement is extradition, followed by cooperation in law enforcement such as, with mutual assistance in criminal proceedings, or mutual legal assistance treaties (MLAT's), transfer of sentenced persons (TSP), transfer of criminal proceedings (TCP), and joint investigation and handling over [10].

Extradition is carried out on the basis of a treaty between the Republic of Indonesia and other countries whose ratification is carried out by law. If there is no agreement, extradition can be carried out on the basis of good relations and if Indonesia's interests so desire. In general, extradition is a result of asylum rights, namely political goals and is a means to achieve power goals. However, at this time extradition is practiced in order to exceed national boundaries in the sense that the national criminal law can be applied to criminals who fled to other countries or so that court decisions against a criminal who fled abroad can be implemented [11]. International treaties on extradition consist of several types and forms. One form of international treaty on extradition is a bilateral international treaty on extradition. An example of this bilateral is the extradition treaty between Indonesia and Korea which has been ratified through Law No. 42 of 2007. Another form of extradition treaty regarding extradition is a multilateral agreement on extradition. Such agreements will be regulated in regional multilateral international agreements. The Arab League Extradition Convention signed on September 14, 1952 is an example of a regional multilateral extradition treaty. There are also international treaties that contain arrangements regarding extradition. In addition, other forms of international treaties regarding extradition are also found in the United Nations Model Treaty on Extradition (1990) [12].

According to Law Number 1 of 1979 concerning Extradition, the surrender of a person who commits a crime outside the territory of the sending country and within the jurisdiction of the country requesting surrender is because he has the power to punish him [13]. The establishment of Law Number 1 of 1979

concerning Extradition is intended to provide a legal basis for making treaties with foreign countries as well as for surrendering a person without an agreement. The method of examination in this court is not a judicial investigation as in an ordinary trial, but an examination based on written statements and evidence from the requesting country submitted by the public prosecutor with his opinion [14].

Observing the sound of the sentence above, it implies that "the method of examination in court ..." related to an extradition request is a special method and is not guided by the procedure for examination in court as regulated in procedural law in general. For this reason, the extradition law must contain clear laws and regulations regarding the procedures and stages of judicial review of requests for extradition. However, in fact, Law Number 1 of 1979 concerning extradition does not contain provisions regarding the process of examining requests for extradition in court. This causes the parties involved in this process, especially law enforcement officers such as judges, prosecutors, and the extradition defendant and their legal representatives to feel confused about the trial process that must be carried out.

One example of a case that occurred in Indonesia related to extradition and which is the object of research in this thesis is the decision Number 369/PID.SUS/2020/PT.DKI.JKT jo. No. 104/Pid.C.Extradition/2020/PN.Jkt.Sel with the name of the extradition defendant Gyu Min Lee alias Lee Gyu Min alias Lee Shiwoo.

Based on the above background, the authors formulate the title "Extradiction Application Process In The Court In The Effort Of Indonesian Criminal Law Enforcement (Study Decision Number: 369/Pid.Sus/2020/Pt.Dki.Jkt Jo. Number 104/Pid.C. Extradition/2020/Pn.Jkt.Sel)".

Overview of the extradition concept

International law is the body of law that regulates international activities. Initially, international law was defined as the behavior and relations between nations, but as increasingly complex patterns of international relations emerged, this definition expanded to include the structure and behavior of international organizations and, to a lesser extent, multinational corporations and individuals [15], [16].

Extradition is crucial for law enforcement in Indonesia, but it is difficult for a country to carry out extradition in practice because there are no international legal regulations that prohibit or compel countries to hand over the requested person via the extradition mechanism. This is based on the sovereignty principle that every nation has legal authority over its own citizens [17].

As a result, the implementation of extradition will depend on the unique characteristics of each country, as some are willing to hand over the perpetrators of the requested crime through extradition without the need for an extradition treaty, while others require that an extradition treaty be in place between the requesting country and the requested country prior to surrender or extradition.

Creating an extradition treaty between nations is the best way to protect a nation's interests and ensure law enforcement for all its citizens. The Indonesia-Australia extradition treaty regulates the mechanism or procedure for the implementation of extradition as well as the criteria for crimes that can be extradited.

The request must be supported by a preexisting extradition agreement between the two parties, or if no such agreement exists, by the principle of reciprocity that has been agreed upon. If the requesting country has not issued a surrender request, the suspect cannot be arrested or handed over. Unless the arrest or detention is based on the jurisdiction of that country or the person whose crime or other crimes committed by the person himself must be formally submitted to the country concerned in accordance with predetermined procedures or international law [18].

It has been established that the primary goal of international law is to ensure objectively that there is justice between nations, rather than merely working to establish a fair system of international relations. Since its independence, Indonesian law has typically governed international agreements; the extradition treaty is one of those agreements that can address transnational crimes [19]. 10 Extradition is the handing over of a person by a state to another state that has asked for the handing over of a person suspected or found guilty of committing a crime outside the boundaries of the requesting state, which has the right to try and convict the individual. Recently, the subject of extradition has come up again and has received a lot of

public discussion. This is in part due to the increasing number of criminals fleeing from one nation to another, crimes that have repercussions in multiple nations, or crimes that have multiple perpetrators who are dispersed across multiple nations. In other words, the crimes and their perpetrators are the responsibility of two or more nations.

These crimes are referred to as transnational crimes, crimes with an international component, or even international crimes. From a global perspective, it is advisable to leave the granting and process of extradition to national legislation, without going against the conditions imposed by a country to make the surrender of the fugitives more difficult. Similarly, if a country has asked for the escapee's extradition based on his race, religion, or political opinions as well as his standing in the asking country's court.

Extradition is typically only used in cases of major offences. A country that has signed an extradition treaty for criminals is obligated to turn over any person(s) living on its soil to a country that has requested their extradition in order for them to face justice for the crime they are accused of committing or to carry out the punishments/sanctions that have been imposed on them. Criminals are returned according to the terms of the agreement, starting with the surrender process, the restrictions on who may be returned, and the categories of offenses that call for extradition [20].

An extradition treaty is a legal contract that comprises international legal norms and functions within the legal system. A nation must subordinate its sovereignty to international law in order for an international treaty to function correctly. This is necessary because there will be a clash between state sovereignty and international law if the state prioritizes its sovereignty over the latter.

Extradition is acknowledged throughout the history of international relations as a tool for deterring and eliminating transnational crimes, sometimes known as transnational crimes. A criminal is formally transferred to the nation where the crime was committed for prosecution or to serve a sentence through the extradition process. There is no overarching rule of international law that compels nations to sign extradition agreements on the basis of a treaty or the principle of reciprocity (equal reciprocity).

Legally, the perpetrator of the crime can be tried and punished by requesting the perpetrator's country to arrest and hand over the individual. After receiving the request to surrender, the country where the perpetrator of the crime is located may hand over the perpetrator to the state or one of the countries that submitted the request to surrender [21], [22]. This method or procedure has been acknowledged and has been generally adopted in both international law and domestic law; it is more commonly known as extradition [23],[24], [25]. Obviously, this can proceed smoothly if the relationship between the country requesting delivery and the country requesting delivery is also smooth. Theoretically, extradition appears straightforward, but in practice there are numerous obstacles. If there is no standard in the implementation of this extradition regarding whether or not there must be a prior agreement between the aforementioned countries, then we must examine this extradition from a broader perspective, both in the context of international law and national law.

It is acknowledged that the existence of an international agreement on previous extradition is crucial for the ease of extradition, so the surrender of a person can be accomplished by adhering to the provisions that have been clearly outlined in the agreement. In the absence of an extradition treaty, a person accused of a crime may be handed over in accordance with international customary law [26].

When the state enforces or implements its laws extraterritorially, new problems arise. If a country does not enforce or implement the laws it has enacted, it will not cause any problems in practice. However, it would be extremely irresponsible for a country to be unable to map its prescriptive jurisdiction (prescriptive jurisdiction) extraterritorially, for instance by examining where Indonesia intends and has the potential and capacity to enforce Indonesian laws.

Generally, extradition requests that are not based on an international treaty (because of a treaty) are problematic. This is due to the lack of a specific legal basis that can be used to surrender an individual. In such situations, the surrender of a person accused of committing a crime is typically accomplished by requesting international courtesy (international courtesy), reciprocal treatment, or generosity (exgratia).

Several international conventions that can be used as a legal basis for criminals under

extradition provisions already existed, such as the Tokyo Convention of 1963, the Hague Convention of 1970, the Montreal Convention of 1971, and the drug convention of 1971.

Extradition must be viewed from both the perspective of international law and national law, as it is impossible to resolve the extradition debate if it is only viewed from the perspective of international law. This is due to the fact that certain aspects of extradition treaties are not fully formulated or regulated, particularly domestic issues of the respective countries involved [27]. In instances such as these, extradition treaties refer to the national law of each party to determine it and its specifics. For instance, the arrest and detention of the requested individual, the determination of whether or not the crime is a political crime, the institution or agency authorized to decide whether the request will be accepted or denied, etc. However, the existing national law is incapable of resolving all of the problems associated with this extradition [28].

Therefore, if the requesting country has not previously made a surrender request, the individual in question cannot be arrested, detained, or handed over. Unless the arrest and detention is based on the country's jurisdiction over the individual and his or her own crimes, or for other crimes committed by the individual on the territory of that country [29], [30].

A country's constitution is its entire system of rules that determine and regulate state life through the state government system and the reciprocal relationship between the state government and individuals within the government (the state) and those outside the government (the state) or in relation to it. As we are all aware, the Republic of Indonesia is a state of law, not one based solely on authority. This means that the state, including the government and state institutions, must be based on law and imbued with Pancasila and the 1945 Constitution, and must be held accountable for all activities and conduct.

Consequently, the government of the Republic of Indonesia must protect the entire nation and state of Indonesia, promote public welfare, educate the nation's life, participate in implementing a world order based on independence, contribute to the establishment of lasting peace, and realize social justice for the entire nation and state of Indonesia.

The perpetrator of the crime can commit it both from within and outside the country of the perpetrator, as well as to the country of the perpetrator himself and to other nations, resulting in substantial tangible and immaterial losses. After the perpetrator's goal or desire to commit a crime with all its repercussions in a country has been fulfilled, it is possible that the culprit will flee to a country that is regarded safe and can give protection.

Obviously, this will impede the ability of law enforcement agents to make arrests, investigate, prosecute, impose crimes, and carry out crimes based on the severity and nature of the crime committed. It is much more difficult if a country does not have diplomatic contacts with other countries or if the perpetrator's place of refuge does not consider the crime to be a crime. Obviously, in terms of international law, the country where the crime was committed and the country to which the criminal fled in order to seek asylum are inextricably linked [31], [32].

The request for surrender must be made formally to the requested country in accordance with the extradition treaty or international law. If the request for submission is not submitted formally but only informally, for instance, it is only presented verbally by the representative of the requesting country to the representative of the requested country who the representative of the requesting country happens to meet at a meeting or international conference. It cannot be considered a surrender request according to the definition and scope of extradition but only then is the stage of exploration.

Unless the requesting country provides a sufficiently convincing guarantee that the death penalty will not be carried out, the extradition request is denied if the crime for which extradition is sought is punishable by death under the law of the requesting country but not under the law of the Republic of Indonesia.

A request for extradition is denied if, according to the competent authority, there is a strong suspicion that the person whose extradition is sought will be prosecuted, convicted, or subject to other actions due to his religion, belief, politics, or nationality, or because he belongs to a particular ethnic group or population. Those who can be extradited are those whose extradition is requested by foreign authority because they are accused of committing a crime

or are required to serve a sentence or detention order.

As long as assistance, experimentation, and conspiracy to commit a crime can be punished according to the law of the Republic of Indonesia and the law of the country requesting extradition, extradition may also be carried out against a person suspected of committing or convicted of committing these acts.

If the person to be extradited is being investigated, prosecuted, or serving a sentence for additional offenses committed in Indonesia, requests for extradition that meet the standards are delayed. An authorized foreign official submits an extradition request to the President through the Minister of Justice through diplomatic channels. The extradition request must be accompanied by the required documentation, such as proof of identity and citizenship, a description of the accused offense, and a letter demanding custody. For individuals who are wanted for serving their sentence, accompanied by the original sheet or an authentic copy of the Court's decision and a letter requesting detention. The paper is accompanied with the needed valid written evidence. Before submitting a request for extradition, if there are urgent reasons, the competent authorities in Indonesia may temporarily detain the desired individual at the request of the requesting country. The articles of the Indonesian Criminal Procedure Code govern the detention. If the request for extradition is not submitted within a reasonable time, the individual is released.

The extradition treaty is very important for Indonesia given the challenges of transnational crime born of globalization. On the other hand, many criminals have fled to other countries to avoid being targeted by security forces.

Methods

This study is part of the study of the Library Law, because the scope of this study is in the field of law. That is through the study of library materials or what is called normative legal research [31]. In addition, by using an empirical approach, activities to explain the law require the support of data or social facts, so it is not only about getting to know legal materials. In addition to using legal terms to describe the law and to add legal meaning and value, we also carry out on-site data collection activities. The steps taken are normative and empirical [32]. This research is based on certain methods, systematics and ideas that aim to learn about

the extradition request process in criminal law enforcement in Indonesia.

The approach used in this research is a statutory or normative approach. The statutory approach is carried out by reviewing all laws and regulations related to the legal issue being studied. The author will examine and examine the request for extradition in an effort to enforce criminal law in Indonesia.

Sources of data used in writing this thesis are secondary data consisting of laws, textbooks, legal journals, legal magazines, expert opinions and various references related to requests for extradition and criminal law, and legal dictionaries, media internet, manuals or handbooks, encyclopedias and books on frequently used terms regarding criminal law and requests for extradition.

Results and Discussion

Reason for Request for Extradition

On Wednesday, September 5, 2018 at around 17.00 WIB when the Singapore Airlines plane landed at Soekarno Hatta Airport, it was found that one of the passengers on behalf of LEE GYU MIN alias GYU MIN LEE alias SHIWOO LEE als LEE SHIWOO was included in the Subject Red Notice Control Number: A - 5606/7-2014 dated July 22, 2014 with the requesting country United States of America.

After matching the data on the RED NOTICE Control Number: A-5606/7-2014 dated July 22, 2014 on behalf of LEE SHIWOO als LEE GYU MIN with the requesting country of the United States with the passport in question, namely the Korean Nationality Passport with Number M01848699 . LEE GYU MIN and his identity were declared identical between the immigration system and the passport. Furthermore, coordination was carried out with the Directorate General of Immigration which handles International Relations and then coordinated with the NCB-Interpol Indonesia Hot Line, then NCB-Interpol asked to secure the person concerned.

The Airport Immigration Officer submitted the subject of a RED NOTICE on behalf of LEE GYU MIN to the Criminal Police picket at Soekarno Hatta Airport on Thursday, September 6, 2018 at around 15.00 WIB along with his Passport and then handed it over to the Polda Metro Jaya.

On September 26, 2018 the Head of the Hubinter Police Division sent Facsimile News Number: NCB-Div/HI/Fax/1824/IX/2018,

September 26, 2018 regarding Submission of a letter of request for extradition from the United States Government against a Korean citizen, Subject Red Notice. LEE GYU MIN als LEE SHIWOO with an attachment to the Letter of the Ministry of Foreign Affairs of the Republic of Indonesia Directorate General of Law and International Treaties Number: 01545/HI/09/2018/56, dated September 26, 2018 regarding Requests for extradition from the United States government for South Korean citizens. SHIWOO LEE, along with Diplomatic Note No. 1677 from the Embassy of the United State of America dated September 26 2018, based on the document, the Polda Metro Jaya followed up on the extradition request.

Based on Diplomatic Note No.1677 from the Embassy of the United State of America dated September 26, 2018 and Letter of the Ministry of Foreign Affairs of the Republic of Indonesia Directorate General of Law and International Treatie Number: 01545/HI/09/2018/56, dated Septemer 26 2018, LEE SHIWOO alias SHIWOO LEE alias LEE GYU MIN alias GYU MIN LEE is wanted for trial in two criminal cases, namely; (1) The trial in the District for the District od Oregon on charges of International parental kidnapping, on March 18, 2010 the District Court for the District of Oregon has issued an arrest warrant on behalf of the person concerned and is still valid until now this; (2) Trial in Circuit Court Of The State Of Oregon For Benton Country on charges of Sexual Abuse In The Second Degree, Felony Assault In The Fourth Degree and Strangulation. Based on these allegations, on December 10, 2009 the Circuit Court of the State of Oregon for Benton Country has issued an arrest warrant on behalf of the person concerned and is still valid today.

Extradition Examination Process

The extradition examination process for the extradition request on behalf of Gyu Min Lee alias Gyu Min alias Shiwoo Lee alias Lee Shiwoo is as follows: (1) Investigators from the Polda Metro Jaya do a filing by examining witnesses and the extradition respondent including collecting evidence (Avidafit) sent by the United States Government; (2) After the filing is complete, the investigator sends the case file to the Extradition Prosecutor at the DKI Jakarta High Court; (3) The Extradition Prosecutor compiles the Prosecutor's Note which contains a juridical analysis of the request for extradition from the United States

Government which will be submitted to the District Court as a basis for examination with the following conclusions: (a) Establish a request for extradition against Gyu Min Lee als Lee Gyu Min als Shiwoo Lee als Lee Shiwoo for prosecution in the District Court of Oregon, United States in case no. 10-CR-60030-AA for accusation 1 and charge 2, namely International Parental Kidnapping **MUST BE REJECTED** because the crime in question is not a crime in the Republic of Indonesia, as regulated in Article 4 of the Law of the Republic of Indonesia Number 1 of 1979 concerning Extradition and General Elucidation of the Law - Law of the Republic of Indonesia Number 1 of 1979 concerning Extradition, related to the principle of double criminality; (b) Establish a request for extradition against Gyu Min Lee als Lee Gyu Min als Shiwoo Lee als Lee Shiwoo for prosecution at the Circuit Court of The States of Oregon for Benton County, United States as referred to in court no. DV0921543 for charges 1-42 related to the crime of Sexual Abuse in The Second Degree and accusations 45 related to the crime of Strangulation **MUST BE REJECTED** because according to the law of the Republic of Indonesia the right to prosecute these crimes has expired, as regulated in Article 12 of the Law of the Republic of Indonesia Number 1 Year 1979 on Extradition; (c) Establish a request for extradition against Gyu Min Lee als Lee Gyu Min als Shiwoo Lee als Lee Shiwoo for prosecution at the Circuit Court of The States of Oregon for Benton County, United States as referred to in court no. DV0921543 for charges 43 and 44 related to the crime of Felony Assault in The Fourth Degree **CAN BE ACCEPTED**; (d) Determined that the Respondent for Extradition on behalf of Gyu Min Lee als Lee Gyu Min als Shiwoo Lee als Lee Shiwoo **CAN BE EXTRADITED** to the United States of America for prosecution at the Circuit Court of The States of Oregon for Benton County of the United States as referred to in court no. DV0921543 **ONLY FOR ALLEGES 43 AND 44** relating to the crimes of Felony Assault in The Fourth Degree; (4) The Extradition Prosecutor at the DKI Jakarta High Prosecutor's Office delegated the case file to the South Jakarta District Court and after examining the trial, the South Jakarta District Court Judges issued Decision Number: 104/Pid.C-Ektradition/2020/PN.Jkt.Sel Date 19 June 2020 which basically states: (a) Reject the request for extradition filed by the United States Government against the Extradition

Respondent; (b) Order the Extradition Prosecutor to immediately submit a copy of this stipulation and the documents related to this case to the Minister of Law and Human Rights to be used as material for consideration of further settlement; (c) To stipulate that the Extradition Respondent remains in custody; (d) Imposing court fees to the state of nil; (5) Due to differences of opinion between the Extradition Prosecutor on the Determination of the South Jakarta District Court Judges, the Extradition Prosecutor submitted a legal countermeasure to the DKI Jakarta High Court and then the DKI Jakarta High Court issued a decision Number: 369/PID.SUS/2020/PT. DKI JKT dated August 18, 2020 which basically decided: "Declare the opposition from the Extradition Prosecutor is unacceptable"; (6) Furthermore, the Extradition Prosecutor on the power of the Attorney General of the Republic of Indonesia filed a legal action for Cassation in the Interest of Law (KDKH) to the Supreme Court of the Republic of Indonesia and the Supreme Court of the Republic of Indonesia issued a decision with its decision in essence "Declaring the Cassation in the Interest of Law (KDKH) from the Extradition Prosecutor not acceptable"; (7) Since the legal action proposed by the Extradition Prosecutor is declared unacceptable, then the Attorney General sends a Court Decision of all other documents to the President to obtain the President's decision on whether or not extradition can be carried out on the request for extradition from the United States Government against Gyu Min Lee alias Gyu Min aka Shiwoo Lee aka Lee Shiwoo.

Matters examined in the extradition request

Some things that can be considered in examining the extradition request of Gyu Min Lee alias Gyu Min alias Shiwoo Lee alias Lee Shiwoo, among others; (1) Conformity of Identity and Nationality of Gyu Min Lee aka Gyu Min aka Shiwoo Lee aka Lee Shiwoo with information and evidence submitted by the United States Government; (2) The crimes alleged against Gyu Min Lee alias Gyu Min alias Shiwoo Lee alias Lee Shiwoo are listed in Article 4 of the Law of the Republic of Indonesia Number 1 of 1979 concerning Extradition and are not Political Crimes or Military Crimes; (3) Right to Prosecution or Right to Implement Court Decisions has or has not expired according to the provisions of criminal law in the United States and in Indonesia; (4) The crime is not punishable by the death penalty in Indonesia and the United States; (5) Not Undergoing Investigation,

Prosecution or Examination in Courts for the Same Crimes in Indonesia; (6) Not Undergoing Investigation, Prosecution or Examination in Courts for Other Crimes in Indonesia.

Obstacles faced by the Government of Indonesia in Extradition

Differences between Law and Legal Systems

In the Indonesian national legal system, even though an international agreement has been ratified with the Law on Ratification, the agreement cannot be implemented if it is not in accordance with the contents of the provisions of the national legislation governing the same material as those specified in the ratified agreement.

The courts of a country may refuse the extradition of a person. They can cancel the application to take the criminals out of there on the grounds of a court ruling. This is because the legal system of the country is different from that of Indonesia. In the continental system, the law or codification is used as the main law. Whereas in the Anglo-Saxon system, precedent (previous court decisions) and customs are the main sources of law. The Anglo-Saxon system places the court as the party that determines whether or not a person can be extradited.

Legal Development

The development of law in developed and developing countries is not the same. In developed countries, regulations develop according to the development of crime, while in developing countries they are more concerned with other things or busy with corruption so that they are left behind in legal developments. This has an effect on extradition because in the Extradition Act and Treaty there is a list of crimes that can be extradited.

If referring to Law Number 1 of 1979 concerning Extradition, the list of crimes contained in the Law has many shortcomings to be applied in the current conditions due to the emergence of various new forms of crime. In the 1979 Extradition Law, it is stated that there are 32 types of crimes that can become objects of extradition. However, the list does not mention the latest types of crimes such as money laundering, destroying documents via the internet, and not including illegal immigrants.

The list of crimes whose perpetrators can be extradited in each extradition treaty is not the same, depending on the material of the treaty bilaterally. The Indonesian government in

accordance with Law No. 1 of 1979 has determined the types of crimes whose perpetrators can be extradited.

The Indonesian government also has extradition agreements with several countries, namely with the governments of Malaysia, the Philippines, Thailand, Australia and Singapore, where in each of these bilateral agreements, the types of crimes whose perpetrators can be extradited in accordance with bilateral agreements have been determined. Likewise, advances in technology and information have led to the development of the types and forms of criminal acts.

There is a National Interest

Indonesia will refuse cooperation with other countries in preventing and fighting crime, if the cooperation is detrimental to Indonesia's interests. Likewise, other countries, such as Singapore, know that there are many corruptors from Indonesia and the proceeds of their crimes in Singapore, therefore Singapore has postponed the Extradition Agreement with Indonesia.

The existence of differences in interests in each country has the impact of different points of view of a country in fighting a crime with an international dimension, so that a country cannot impose its personal will even though its purpose and intention is to eradicate a crime.

Extradition Process in Law Number 1 of 1979

In Law Number 1 of 1979, the arrangement regarding the extradition process can be said to be too convoluted so that it will take a long time and cost a lot of money. Seeing the extradition process from the beginning until the handover of the perpetrator of the crime from the requested country to the requesting country, there are 3 (three) stages that must be passed, namely the pre-extradition stage, the extradition process stage and the extradition implementation stage. Before an extradition request is submitted, the first step is usually to obtain information about the whereabouts of the wanted criminal.

After knowing his whereabouts, a request for arrest and provisional arrest was submitted. The search, arrest and detention of criminals is generally carried out in cooperation with Interpol, but there are also countries, in accordance with the legal provisions of their country, requiring that the request be submitted through diplomatic channels.

At the extradition request stage; the requesting country shall immediately submit a request for extradition through diplomatic channels to the Minister of Justice of the Republic of Indonesia. Article 22 paragraph 2 states that in this case there is no extradition agreement between Indonesia and the requesting country, the Indonesian Minister of Justice submits it to the President, but if there is an agreement, if the request has met the requirements, the Indonesian Minister of Justice will send the request letter to the National Police Chief or the Prosecutor.

Supreme to conduct an examination (Article 24). After completion of the examination by the National Police, the extradition file is submitted to the District Attorney (Article 26). Within 7 (seven) days, the District Attorney must submit it to the District Court (article 27).

Furthermore, the District Court holds a hearing (article 32) and issues a Court Decision whether or not the person can be extradited (article 33 paragraph 1). If there is evidence that is requested by the requesting country to be confiscated (Article 42), in a court order it must be stated whether or not it can be submitted (Article 43). The court decision and all related documents are submitted to the Indonesian Minister of Justice (Article 33 paragraph 2). Then the Court Decision along with the considerations and the Minister of Justice to the President to obtain a decision (Article 36 paragraph 1). Based on these considerations, the President decides whether or not a person can be extradited (Article 35 paragraph 2). The Presidential Decree is submitted to the requesting country by the Indonesian Minister of Justice (article 36 paragraph 4) and the Indonesian Minister of Foreign Affairs, the Attorney General and the National Police Chief (Article 38).

At the stage of handing over an extradited person, the Indonesian Minister of Justice shall notify the requesting State Official regarding the time and place of delivery (article 40) including confiscated evidence, if any. Looking at the process or stages of the extradition agreement above, it can be said that the extradition process in Law Number 1 of 1979 is too convoluted so that it takes a long time and costs a lot of money.

Lack of Understanding of Implementing Apparatus in Extradition

Due to the lack of understanding and experience of implementing officers in the Police, the Prosecutor's Office, the Courts, the Ministry of Law and Human Rights and the Ministry of Foreign Affairs, both at the central and regional levels, they often hesitate or are afraid to take an action that must be implemented.

Police investigators want to arrest and detain Interpol's Red Notice (DPO) if there is a detention deposit letter from NCB-Interpol Indonesia, the Prosecutor's Office refuses to extend the detention because it has been issued for 20 (twenty) days, the Ministry of Law and Human Rights sends an extradition file without being sealed and still many other shortcomings.

The effectiveness of the extradition treaty is also highly dependent on the legal process in Indonesia. The existence of an extradition treaty can indeed have a positive impact on the war effort against all forms of crime.

Meanwhile, from the perspective of foreign relations, the extradition treaty will clearly bring a new color. Not only Indonesia can ask other countries to extradite someone who is in their country to Indonesia, other countries can also request the same thing, namely to extradite people who are in Indonesia to be handed over to that country.

Conclusion

In Indonesia, the extradition process for crimes is regulated in the Law of the Republic of Indonesia Number 1 of 1979 concerning Extradition. One of the cases that is in accordance with the procedures stipulated in the Law of the Republic of Indonesia Number 1 of 1979 concerning Extradition is the case stated in the decision no. 369/Pid.Sus/2020/PT.DKI.JKT jo. No. 104/Pid.C.Ekstradition/2020/PN.Jkt.Sel where the United States Government as the applicant asks Gyu Min Lee alias Lee Gyu Min alias Shiwoo Lee alias Lee Shiwoo who is accused of committing a crime of sexual abuse in the second degree, assault in the fourth degree and strangulation for trial in the Circuit Court of The States of Oregon for Benton County.

In order to grant the request of the United States Government, a series of open court processes were carried out to identify whether the crime was a political crime or not, whether the crime was a military crime or not, whether the case was being investigated, prosecuted or examined in a court in Indonesia for crimes the same as requested in the request for extradition from the

United States Government or not, whether the crime is punishable by the death penalty both in Indonesia and in the United States of America or not, and a series of other conditions related to whether or not the request for extradition is fulfilled under the provisions of Article 32 of the Law of the Republic of Indonesia. Number 1 of 1979 concerning Extradition.

From a series of extradition processes undertaken in the settlement of decision No. 369/Pid.Sus/2020/PT.DKI.JKT jo. No. 104/Pid.C.Ekstradition/2020/PN.Jkt.Sel, the Indonesian government can encounter obstacles, which include differences in law and the legal system, legal developments in developed and developing countries, the existence of national interests that have an impact on differences the point of view of a country in fighting a crime, the extradition process in Law Number 1 of 1979 which is too convoluted so that it takes a long time and costs a lot, and the understanding of the implementing apparatus in extradition is minimal.

For this reason, the Government should make reforms and adjustments to the extradition process that is more open, practical, and uncomplicated by not only considering national law but also from the perspective of international law.

References

- [1] Widodo, (2009). *Hukum Diplomati dan Konsuler pada Era Globalisasi*. Surabaya: LaksBang Justitia.
- [2] Angkasari, W. (2014). Tinjauan Yuridis Perjanjian Ekstradisi terhadap Kejahatan Ekonomi dalam Kepentingan Nasional Indonesia. *Lex Jurnalica*, 11(1), 18071.
- [3] Kalalo, F. P. (2016). Efektifitas Perjanjian Ekstradisi sebagai Sarana Pencegahan, Pemberantasan dan Penghukuman Pelaku Tindak Pidana Internasional. *Lex et Societatis*, 4(1).
- [4] Romli A, (1995). *Pengantar Hukum Pidana Indonesia*. Bandung: PT. Eresco.
- [5] Romli A, (2000). *Hukum Pidana Internasional*, Edisi Revisi. Bandung: Refika Aditama.
- [6] Sahati, N. R., & Alam, K. (2020). Perjanjian Ekstradisi Dalam Penegakan Hukum Tindak Pidana Korupsi Di Indonesia. *Yustitia*, 6(2), 180-200.

- [7] Widyawati, A. (2014). *Hukum Pidana Internasional*. Jakarta: Sinar Grafika. 173-174.
- [8] Saleh, R. (1992). *Penerapan Lembaga Ekstradisi Dalam Hubungan Antar Negara*. Jakarta: Renekacipta.
- [9] Kusumaatmadja, M., & Agoes, E. R. (2021). *Pengantar hukum internasional*. Penerbit Alumnus.
- [10] Sefriani, (2018). *Hukum Internasional Suatu Pengantar*, Depok: Rajawali Pers.
- [11] Starke, J.G. (1989). *Pengantar Hukum Internasional*. Jakarta: , Sinar Grafika.
- [12] Parthiana, I. W. (1993). *Pengantar Hukum Internasional*. Bandung: Mandar Maju.
- [13] Republik Indonesia, Undang-Undang Nomor 1 Tahun 1979 tentang Ekstradisi, Pasal 1.
- [14] Republik Indonesia, Undang-Undang Nomor 1 Tahun 1979 tentang Ekstradisi, Penjelasan Umum.
- [15] Slaughter, A. M. (1995). International law in a world of liberal states. *European journal of international law*, 6(3), 503-538.
- [16] Guzman, A. T. (2002). *A compliance-based theory of international law*. Calif. L. Rev., 90, 1823.
- [17] Rakhmat, M. (2016). Extradition Process in Transnasional Criminal Act to Find Perpetrators. *MIMBAR: Jurnal Sosial dan Pembangunan*, 32(2), 393-400.
- [18] Chen, L. C. (2014). *An introduction to contemporary international law: a policy-oriented perspective*. Oxford University Press.
- [19] Emmers, R. (2003). The threat of transnational crime in Southeast Asia: drug trafficking, human smuggling and trafficking and sea piracy. *Revista unisci*, (2), 1-11.
- [20] Kinneally III, J. J. (1987). The Political Offense Exception: Is the United States-United Kingdom Supplementary Extradition Treaty the Beginning of the End. *Am. UJ Int'l L. & Pol'y*, 2, 203.
- [21] Plachta, M. (2003). European arrest warrant: Revolution in extradition?. *European Journal of Crime, Criminal Law and Criminal Justice*, 11(2), 178-194.
- [22] Bogdan, A. (2008). The United States and the International Criminal Court: Avoiding Jurisdiction Through Bilateral Agreements in Reliance on Article 98. *International Criminal Law Review*, 8(1-2), 1-54.
- [23] Onyeneke, O. H. (2009). Extradition: International Law and Domestic Law: Gary McKinnon v. Natwest Three. *Natwest Three* (December 4, 2009).
- [24] Greenwood, C. (2002). International law and the 'war against terrorism'. *International Affairs*, 78(2), 301-317.
- [25] Meron, T. (1998). Is international law moving towards criminalization?. *European Journal of International Law*, 9(1), 18-31.
- [26] De Wet, E. (2004). The prohibition of torture as an international norm of jus cogens and its implications for national and customary law. *European Journal of International Law*, 15(1), 97-121.
- [27] Dugard, J., & Van den Wyngaert, C. (1998). Reconciling extradition with human rights. *American Journal of International Law*, 92(2), 187-212.
- [28] Josipovic, I. (2006). *The Implementation of International Criminal Law in the National Legal System and the Liability for War Crimes (the Case of the Republic of Croatia)*. The Implementation of International Criminal Law in the National Legal System and the Liability for War Crimes (the Case of the Republic of Croatia), 1000-1062.
- [29] Goldsmith, J. (2003). *The self-defeating international criminal court*. U. Chi. L. Rev., 70, 89.
- [30] Caesius, A. (1999). The Statute of the International Criminal Court: some preliminary reflections. *European Journal of International Law*, 10(1), 144-171.
- [31] Scharf, M. (1996). The letter of the law: the scope of the international legal obligation to prosecute human rights crimes. *Law and Contemporary Problems*, 59(4), 41-61.

- [32] Roht-Arriaza, N. (Ed.). (1995). *Impunity and human rights in international law and practice*. Oxford University Press on Demand.
- [33] Soekanto, S., & Mamudji, S. (1985). *Penelitian Hukum Normatif*, Jakarta: PT. Raja Grafindo Persada.
- [34] Bahder Jonan Nasution, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung, 2008, hal. 87.