

Legal Force Of Judicial Decree On Extradition Case

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ABSTRACT

The objectives of research were 1). To find out the respondent's human rights protected in Indonesian criminal procedure against an extradition request from another country, (2) to identify the legal force of a judicial decree in an extradition case in Indonesia. Development of crime is not criminogenic, but improper development processes can contribute to increased crime, both national (local) and transnational crimes, the resolution of which should be accomplished through extradition. Extradition is governed by Extradition Law Number 1 of 1979 (UUE). Extradition phases are carried out in two ways: judicial (legal) process in the form of judicial decree and political process (presidential decree), but whether a person can be extradited is determined by presidential decree or executive order. The research used a normative juridical method, which refers to existing law or legislation, legal theories, or scholars' opinions. The research relied on secondary data, and the research specification was analytical descriptive. The data sources used a combination of primary and secondary legal materials. The study concludes that: (1) Extradition case handling law procedure is not completely regulated in UUE, resulting in non-clarity, uncertainty, and non-protection of respondent's human rights for extradition requested by other country. (2) The president makes the final decision on extradition, and the judicial decree (trial product) of the extradition case is only one of the factors considered by the president.

Keywords: Extradition, Examination, Proceeding, Procedural Law, Judicial Decree.

A. INTRODUCTION

Global development is marked by the rapid advancement of technology, information, and communication instruments, as if there are no borders between countries. The development process, as part of the global development demand, has provided many benefits, but it also contributes to the growth of transnational crime. Development is not criminogenic, but it can contribute to crime when it is unplanned, overlapping, disregarding cultural and moral values, and failing to cover an integral community protection strategy (Barda Nawawi Arief, 2017). The criminal development includes both national (local) and transnational crimes, which must be resolved through international cooperation via the extradition process.

The word of Extradition is derived from the Latin phrase "extradere," which means "to hand over or give." Extraditio is a noun that means "handover"

(Dody Kridadaksana, 2012). Terminologically, meanwhile Extraditio is handover of a person who is suspected of committing a crime by another country, as governed by an agreement between the two countries, (Kamus Besar Bahasa Indonesia, n.d). Extradition is defined as a legal process in which a country gives or hands over to another country a person who is suspected or convicted of a crime in the demanding country or violating international criminal law to be adjudicated or punished in the demanding country for the crime that is demanded for (Cherif Bassiouoni, 2003). In other words M"extradition is the delivery of an accused or convicted individual to the state on whose territory he is alleged to have committed, or to have been convicted of, a crime by the State on whose territory the alleged criminal happens for the time to be (L. Oppenheim, 1960).

Meanwhile, in Indonesia extradition is regulated in law Number 1 Year 1979 Concerning Extradition (hence referred to as UUE), which became effective on January 18, 1979, and has not been updated or repealed. Extradition laws previously in

place were based on the Koninklijk Besluit of May 8, 1883, No. 26 (Staatsblad 1883–188) regulating "Uitlevering van Vreemdelingen," which was applicable under Article 11 Transitional Rule of the 1945 Constitution. According to Article 1 UUE, extradition refers to the handing over of a person by a country to a country that requests the handover of a person suspected or convicted of committing a crime outside the territory of the country that requests the handover and in the territorial jurisdiction of the country that demands the handover because it has the authority to judge and convict him/her.

The two types of extradition requests that can be made under the terms of the UUE are those with and without a prior extradition agreement. Foreign officials authorized to submit requests for extradition to the President through the Minister of Justice via diplomatic channels. The extradition request must include all relevant documentation, including proof of identity, nationality, the details of the alleged crime, the request for detention, the original sheet, an authentic copy of the court order for the convicted party, and the request for detention. The extradition process must be handled by a judicial authority (District Court) in order to get a court order. The court examination process differs from regular proceedings in that it is based on a written description and evidence submitted by the public prosecutor, together with that prosecutor's assessment of the case (Indonesian UUE, Article 27).

Before the public prosecutor files a judicial decree, the extradition case must be preceded by verbal process in the form of collection of items of evidence by investigator, as the Criminal Law Procedures Code (KUHP) commonly refers to investigation, followed by pre-prosecution process, prosecution, and finally proceeding with judicial decree as the outcome. In gathering evidence through proceedings, UUE authorizes arrest, detention, and confiscation in accordance with Indonesian criminal procedure law, with the exception of detention authority as specifically regulated in UUE (Indonesian UUE, Article 19 and Article 42). The current criminal procedure law is under Law (UU) Number 8 Year 1981 Concerning KUHP, so the Indonesian criminal procedure law as UUE begins to apply is *Herzien Inlandsch Reglement* (HIR). KUHP does not recognize the law of extradition procedure, from investigation to proceeding, and UUE does not regulate the law of extradition examination procedure in detail. The Regulation Public Prosecutor of the Republic of Indonesia (Perja) Number 006 Year 2018

concerning Guidelines on Handling Extradition expressly states (Indonesian Perja, p.3) that the extradition case handling process is not clearly set forth in UUE.

Extradition requests must be handled through the judicial process, but the decision on extradition requests is made by the executive body, not the judicial body. The President makes the final decision on an extradition request based on legal advice from the Minister of Justice and a court order (Indonesian UUE, Article 36). Such a condition undoubtedly creates legal certainty, which may jeopardize the protection and interest of human rights of the respondent for extradition.

In this regard, there is a gap between the norm in the law of extradition procedure and the expectation for creating certainty in the protection of the dignity and status of the respondent for extradition, so it is very important to conduct research and study on the extent of the law of criminal extradition procedure in Indonesia and how to position judicial decree as part of judicial legal product in realizing human rights protection.

B. RESEARCH PROBLEMS

Based on the background above, the problems can be formulated as follows:

1. How is respondent for extradition's human rights protection in Indonesian law of criminal procedure against extradition request of other country?
2. How is the legal force of judicial decree of extradition case in Indonesia in protecting respondent for extradition' human rights?

C. RESEARCH METHOD

This research used the normative juridical method, which refers to existing law or legislation, legal theories, or the opinions of scholars (Soerjono Soekanto, et al., 1985). The research specification was descriptive analytical, describing current legislation in conjunction with positive law theories regarding the problems studied (Rony Hanitijo Soemitro, 2010). The analysis was carried out using an appropriate, systematic, factual, and accurate interpretation of the facts and data gathered (Moh. Nasir, 1998). This research would describe in detail the law of extradition examination procedure set forth in UUE and application practice in handling extradition case related to a person's human rights.

The obtained data would be presented in the form of a systematically organized explanation as an intact set, indicating that the method used in this legal writing was qualitative. This means that the

data were systematically organized in the form of a description or explanation to describe the research findings (Soerjono Soekanto, 1986).

D. ANALYSIS AND DISCUSSION.

I. Law of Extradition Request Procedure in Indonesia.

An international agreement is required to return a person who has fled abroad. Extradition is a type of international agreement that is frequently used to return a fugitive. Aside from the requirement of an international agreement between related countries, extradition can also be accomplished through a reciprocal process (reciprocity principle). This means that, in the absence of international agreement, a country may return a perpetrator to the demanding country, provided that the demanding country responds to such action (Berty Diah Rahmana, 2015). International agreement (treaty) with Indonesia is the main requirement in consideration of other country's request for extradition of a person of other nationality in Indonesia. This is expressly set forth in Article 2 paragraph (1) UUE with exception of reciprocity in Article 2 paragraph (2) UUE.

The general principle to be followed when requesting extradition from another country is outlined in the following articles follow:

- a. Double criminality principle, that is an act performed either by demanding country or demanded country as crime. This principle is listed in the list of extraditable crimes as appendix to UUE (Article 4).
- b. Principle that if a certain crime by demanded country is deemed a political crime, thus extradition request shall be rejected (Article 5).
- c. Principle that demanded country shall have the right not to hand over its own citizen (Article 7).
- d. Principle that a crime committed entirely or partially in the territory that is included or not deemed included in the jurisdiction of demanded country, this country may reject extradition request (Article 8).
- e. Principle that an extradition request can be rejected if the authorities of demanded country are examining the concerned person for the crime of which handover is requested (Article 9).
- f. Principle that if for a certain crime, an order with certain force has been rendered by an authorized Court of demanded country,

extradition request is rejected/ non bis in idem (Article 10).

- g. Principle that if a person is not handed over because of the right to claim or the right to enforce criminal judgment has expired (Article 12).
- h. Principle that a person who is handed over will not be claimed, punished or detained for any crime committed before the concerned person is extradited besides the crime for which he/she is handed over, except if the country demanded to handed over the person agrees on it (Article 15).

Extradition requests are submitted in writing to the Ministry of Justice (Minister of Law and Human Rights) to be forwarded to the President. Extradition requests must be accompanied by attachments that comply with the provisions of Article 22 paragraph (2) and paragraph (4) UUE, both in the case of extradition requests to undergo punishment (the person has been adjudged guilty by the court of the demanding country) and the one suspected of committing crime (suspect, accused). Based on a court order, the President sought legal advice from the Minister of Justice to determine whether the person could be handed over to the country that requested extradition.

The process of settling extradition requests is divided into two stages: legal and political processes. The legal process begins with the creation of an extradition case file, which includes examination and any investigatory actions such as arrest, detention, and confiscation (Indonesian UUE, Article 19, Article 26, Article 34, Article 35, Article 42), Submission of files to the public prosecutor and prompt action on whether or not extradition is carried out the term "investigation" is not used in the creation of UUE case files, but rather "examination." The examination results are recorded in a minute, and the examination is based on information or evidence obtained from the demanding country (Indonesian UUE, Article 26, Article 27).

According to KUHAP, investigation is defined as a set of investigator's acts in the case and in accordance with the way as set out in this law (KUHP) to search for and collect evidence, with the goal of determining the criminal act and locating the suspect (PAF.LAmintang, 1984). KUHAP refers to the collection of investigation results using the terms "investigation result" and "case file." (R. Soenarto Soerodibroto, 2007). One of the issues with the law of extradition procedure is the filing of extradition cases, because the UUE

does not recognize the term "investigation," but rather "examination." Meanwhile, UUE has no definition of "examination." In practice, examination product is just like investigation result of criminal act case in general, with standard "pro justisia" in fling level (Polda Metrojaya [Greater Jakarta Regional Police], 2018, p.1) "for justice" at prosecution level (Public prosecutor) and in judicial decree (proceeding) using wording "for justice based on God Almighty" as required by Article 197 (1) KUHAP (South Jakarta District Court, 2020, p.1).

Therefore, evidence and information collection practice based on interpretation of articles in UUE and relevant law, especially KUHAP. For more binding interpretation, the order is generally searching for provisions in law, and then the explanation, if the meaning is not found then it is searched for in jurisprudence and lastly interpretation according to doctrine, one of which is systematic interpretation. Systematic interpretation means that if a term or word appears multiple time in a law, it must have the same definition (SR.Sianturi, 1999). PWC. Akkerman states systematic interpretation by viewing relationship between rules in a law that depends on each other (Peter Mahmud Marzuki, 2005, p.151).

According to the provisions of Article 26 paragraph (1) and (2) UUE, examination can be defined as collecting information and evidence. Article 26 states:

- (1) If the one detaining is Indonesian National Police, after receiving extradition request letter, the Indonesian National Police shall perform examination on the person based on the information or evidence from the demanding country.
- (2) Examination results are recorded in a minute and immediately submitted to local Public Prosecutor of the Republic of Indonesia.

Although UUE does not recognize the term item of evidence but "information and evidenc2", but from the definition of examination, it can be defined as the process to search for item of evidence, in the form of information (witness, expert or respondent for extradition), letter and clue as referred to in Article 184 paragraph (1) KUHAP, including exhibit obtained from confiscation. This is based on some reasons:

- UUE expressly states legal acts like arrest, detention and confiscation are based on Indonesian law of procedure (KUHAP), except there is deviating provision (*lex specialis*). Arrest,

detention and confiscation are only performed by investigator for the sake of justice "pro justisia", thus when UUE refers to procedure under KUHAP, then the set of examination process according to UUE must be defined the same with investigation to the extent not provided otherwise in UUE (like in case of extension of detention). Likewise, item of evidence obtained in extradition examination must be defined as that in Article 184 paragraph (1) KUHAP.

- The definition of investigation in Article 1 point 2 KUHAP never stated the term item of evidence but "evidence", while Article 184 paragraph (1) in conjunction with Article 183 KUHAP uses the term item of evidence. Kamus Besar Bahasa Indonesia (KBBI) defines evidence as something that states the truth of an event, the truth, witness, sign of things serving as the sign of misconduct (Department of Education and Culture, 2008, p.133). Item of evidence that is called forms of evidence in US Criminal Procedure Law means real evidence, documentary evidence, testimonial evidence and judicial notice. In this system real evidence (exhibit) is the most valuable item of evidence, while real evidence according to KUHAP is not item of evidence, but real evidence as the result of investigation result, that is confiscation that will later become part of case file (investigation result) in support of the existing item of evidence. Therefore, the definition of "evidence" in examination according to UUE also includes the definition of exhibit that is obtained from confiscation according to Article 42 UUE (Supardi, 2021).

Based on systematic interpretation of UUE provisions, extradition examination practice may continue until now, but this condition demonstrates one weakness and lack of clarity of UUE in regulating law of investigation procedure. The procedure for gathering evidence refers to KUHAP, but the definition of the term is different (investigation). Furthermore, because the final result of the examination process (collecting evidence) will be tested and a court order will be requested, UUE should continue to use the term investigation rather than examination. According to Article 34 sub b detention of person whose extradition is requested shall be 30 days. The explanatory note states "The detention for 30 days as referred to in sub b includes detention by the Indonesian National Police and detention by Public Prosecutor Office pursuant to Indonesian Law of Criminal Procedure". This means that the 30 days is the maximum number investigator and public prosecutor can use to share detention period.

There is no sufficient explanation in UUE of how many days their respective authority over the shared detention period is. But strangely, the last phrase in the explanatory note says that the detention “in accordance with the Indonesian Law of Criminal Procedure”, while the shared authority of detention between investigator, public prosecutor and judge in KUHAP has been divided explicitly from Article 24 to Article 29 KUHAP. The provision of shared detention period is finally confirmed by Perja Number 006 Year 2018 concerning Guidelines on Handling Extradition, Appendix I CHAPTER III letter C.4. In the same chapter, letter C5 confirms that in case investigator has not performed detention, then public prosecutor may perform detention for 30 days.

The act of detention is part of the authorities of investigator, public prosecutor or judge to place a person, suspect or accused, in a certain place within a certain time (Indonesian KUHAP, Article 1 point 21). Therefore, detention is actually a form of restraint or restriction of freedom that is directly related to a person's human rights to live a free life without restriction of certain time and place, thus the detention issue should be placed with rigid limitation to ensure certainty of a person's human rights in undergoing extradition process.

In practice, when investigator perform detention, the police (investigator) shifts detention to public prosecutor before expiry of 30 days of detention period for further detention by public prosecutor, although the case file has not been completed or there has been no delivery of case file stage one for investigation as referred to in Article 138 KUHAP (Polda Metrojaya, 2018, p.95). Polda Metro Jaya investigator arrested respondent for extradition Gyu Min Lee als Lee Gyu Min als Lee Shiwo from 26 September 2018 to 25 October 2018, but before the end of detention period on 19 October 2018 the detention was shifted to extradition public prosecutor to 25 October 2018. This means that the investigator arrested sealam 23 days and public prosecutor arrested him/her for 7 days, totally 30 days. The next detention was based on request for detention extension from public prosecutor to Chairman of South Jakarta District Court in accordance with the provisions of Article 34 sub b UUE, several times of extension of detention each for 30 days (South Jakarta District Court, 2020, pp.2-4).

Normatively, the extension of detention by Chairman of District Court can keep be performed provided that (Indonesian UUE, Article 35 paragraph (2)):

- a. There is no court order on extradition request.
- b. Information from Minister of Justice is needed as referred to in Article 36 paragraph (3).
- c. Extradition is also requested by another country and President has not given his/her decision.
- d. Extradition request has been granted, but cannot be performed yet.

The Chairman of District Court has the authority to limit the number of extensions of detention provided that the requirements outlined above are met. At investigation level, extension proposed by public prosecutor can be performed continuously provided that investigation file has not been completed or submitted to the court. This is different from the provisions of KUHAP as confirmed in Article 19 paragraph (2) and (3) UUE, although it remains a separate problem when associated with respondent's human rights issue.

Detention issue is something resistant since it is related to the freedom aspect of every human. Detention is part of the authority of investigator, public prosecutor or judge to place a suspect or accused in a certain place for a certain time (Indonesian KUHAP, Article 1 point 21). Therefore, detention is actually the form of restraint or restriction of freedom that is directly related to a person's human rights to live a free life without restriction of certain time and place. Therefore, exception of prevailing procedural law should be regulated rigidly in the concerned law, instead of in rules below law.

After completion of case file and investigator has submitted it to public prosecutor, public prosecutor shall have 7 days to submit the case to the court by stating the reason of the need to extradite respondent for extradition (Indonesian UUE, Article 27). UUE does not give public prosecutor the chance to perform pre-prosecution as set forth in Article 138 KUHAP and Article 30 paragraph (1) sub a along with explanatory note to Law Number 16 Year 2004 concerning Public Prosecutor of Republic of Indonesia, within 14 days to investigate the completeness of file and possible return to investigator along with instruction. Considering formal and material completeness is important for grant of extradition, Perja Number 006 Year 2018 concerning Guidelines on Handling Extradition in Appendix II keeps regulating return of case file to be completed with return code P-19 Extradition, that upon completion it will be declared complete by extradition public prosecutor by issuing letter with code P-21 Extradition, later

to be submitted to the court to request for judicial decree.

Pursuant to Article 27 UUE in submission of extradition case “public prosecutor states the reason in writing”. There is no other explanation and there is no such term of indictment as set forth in Article 143 paragraph (1) and (2) KUHAP stating that shift of case is equipped with indictment upon meeting certain requirements. Request/application for extradition is accompanied with “Prosecutor's Notes (P-30)” with wording “for justice” like common indictment. The content of public prosecutor note shall principally be: (Indonesian Perja Number 006 Year 2018, Appendix II)

1. Identity of respondent for extradition.
2. History of detention.
3. 3. Prosecutor's Notes, containing analysis on:
 - a. Relevance of identity and nationality of respondent for extradition to information and evidences.
 - b. The crime is contained in Article 4 Law Number 1 Year 1979 concerning Extradition and not political crime or military crime.
 - c. Non-expiry of prosecution right and the right to enforce court order.
 - d. A court order with certain legal force has or has not been rendered for the crime committed by respondent for extradition.
 - e. The crime is not subject to death penalty in Indonesia in the demanding country.
 - f. There is no investigation, prosecution or examination in progress in a court proceeding for the same criminal act.
 - g. There is no investigation, prosecution or examination in progress in a court proceeding for another criminal act.

UUE does not provide any special procedure for extradition proceedings, with the exception of one related to general proceeding provisions under KUHAP, such as proceeding open to the public and its exception, public prosecutor presence in proceeding (Article 31), respondent presence in proceeding under summons by public prosecutor (Article 30). The materials to be examined in court are not dissimilar to the public prosecutor's note of request in item 3 above (Article 32). Principally, proceeding process is performed by panel of judges (there isn't a single judge), from reading of public prosecutor note by extradition public prosecutor,

response of respondent for extradition/attorney, filing of proof by public prosecutor and respondent/attorney. This is followed with reading of judicial decree containing facts of proceeding, consideration of order and lastly injunction of whether public prosecutor's petition is granted or not (South Jakarta District Court, 2020, p.2)

From the explanation, the procedure of criminal case of extradition proceeding is quite similar to petition case proceeding of civil case. The same character (Didik Endro Purwoleksono, 2015), also exists in general criminal case process when there is pre-trial. Pre-trial is a general criminal but the procedural process is civil or contradictoir (answering each other). Even for pre-trial of claim for compensation according Article 101 KUHAP it is confirmed using law of civil procedure. Law is made available to regulate community life transaction not to be fall down (Peter Mahmud Marzuki, 2005). Nonet & Selznick state procedure is the heart of law, order and fairness, substantive justice, is the goal and main competency of rule of law (Nonet & Selznick, 2013) Pre-trial is the legal procedure that allows the suspect/accused to examine whether the actions of the investigator or public prosecutor are consistent with the prevailing general principles of law. By contradictoir investigator/public prosecutor proves that acts are correct.

According to Article 30, the UUE respondent is present at the proceeding on the basis of a summons from the public prosecutor. Respondent for extradition responds to public prosecutor's note and presents evidence otherwise for this purpose. This means that the extradition request proceeding is also contradictory, but unlike the pre-trial proceeding, the judge's final decision is expressed as an order rather than a decree. This is understandable given that the case is a request, but there is an anomaly because two parties, the public prosecutor and the respondent for extradition as ex-parte (adverse party), are both present in the proceeding. The order is being requested solely for the benefit of one party. The order is issued solely to resolve the petitioner's interest in a legal issue requiring legal certainty, where the problem in question is not directly related to the rights or interests of others. Order is made without any disputes or disagreements with another party (Rio Christiawan, 2018), which means that the proceeding is a petition for order, and there is no other party in the proceeding besides the petitioner.

An order is a decision that expresses the dictum of a petition's settlement into a judicial decree. The natures of judicial decree are follows:

- a. Dictum is declaratoir, that it only contains confirmation of legal declaration of what is requested.
- b. Judicial decree must not contain condemnatoir dictum (containing punishment) for anyone.
- c. Dictum decree must not contain constitutive injunction, that is to create new condition (Yahya Harahap, 2014).

According to the author, the procedural law of extradition case proceeding regulated in UUE does not meet the proceeding requirements of a request because UUE provisions only refer to current criminal procedure law (KUHAP). Furthermore, exempting an extradition case from investigation allows for a special legal act of criminal case investigation that restricts human rights, such as arrest, detention, and confiscation, the output of which final settlement is in the form of a decree rather than an order. This means that procedural law of extradition examination continues to cause legal issues, unless UUE expressly determines procedural law anomaly on its own (specialized law).

UUE does not regulate legal effort for extradition order issued by judge. In the case of Gyu Min Lee als Lee Gyu Min als Lee Shiwo that was decided with Decree of South Jakarta District Court Number 3104/Pid. C-Extradition /2020/PN.Jkt.Selatan, the public prosecutor performed legal effort "appeal" to High Court of DKI Jakarta. High Court of DKI Jakarta rejected public prosecutor's appeal under consideration that the Law did not regulate appeal legal effort, thus the appeal of public prosecutor who requested for extradition must be declared unacceptable (High Court of DKI Jakarta, 2020).

This is different from the Decree of High Court of DKI Jakarta Number 16/PID/Plw/2014/PT.DKI dated 25 February 2014 in the name of respondent Sayed Abbas Azad bin Sayed Abdul Hamid. The Panel of judges granted the public prosecutor's appeal against Decree of South Jakarta District court Number 01/PID.C/Ekst/2013/PN.Jkt.Sel dated 11 July 2013 that rejected extradition request against the respondent to Australia. The consideration of the Judge of High Court of DKI Jakarta to grant the appeal against Judge of First Instance that had made mistake in the consideration of decree and ignored facts in proceeding and ignored documentary evidences and Australia (Isabela Siboriana Bone Tuames, et al, 2016).

There are two different orders regarding whether or not a legal effort can be made against an extradition

order, indicating that the provisions in UUE are still far from perfect, resulting in different perceptions when applying the same thing. This is harmful because it can lead to legal uncertainty and impede the realization of justice. However, Perja Number 006 Year 2018 concerning Guidelines on Handling Extradition, in Appendix I CHAPTER III letter D.14 has confirmed and opened that chance, moreover if respondent also files legal action. To give legal certainty both to public prosecutor and respondent, in author's opinion legal effort should be expressly regulated in UUE.

2. Legal Force of Judicial Decree in Extradition Case.

As stated in the preceding description, the resolution of a request or petition for extradition is carried out in two stages, namely legal and political processes. Generally, politics is defined as various activities in a state system concerning the process of determining goals and implementing them (Miriam Budiardjo, 1986). Roger F Soltau confirms that political science learns state, state goals, institutions to implement the goals, relations between states and relations between state and citizen (Roger F.Soltau, 1961). Thus, political process in settlement of extradition request may be defined as a process of making decision of extradition based on consideration of relations between states or state and citizen.

The results of judicial examination of extradition may decide two possibilities, of whether extradition can and cannot be done ((Indonesian UUE, Article 32). Public prosecutor will submit judicial decree along with related documents to Minister of Justice along with Attorney General's consideration to be forwarded to President ((Indonesian Perja Number 006 Year 2018, Appendix I Chapter III letter C.11)

Based on an article 36 UUE, the Minister of Justice (Minister of Law and Human Rights) receives a court order on extradition and delivers it to the President for consideration, along with the Ministers of Justice, Foreign Affairs, the Attorney General, and the Chief of the Indonesian National Police. Following that, the President decides whether or not a person can be extradited to a demanding country. Referring to the description above, we may conclude that whatever order rendered by the court, whether it is to grant or reject extradition requested by other country will depend on president's political decision. The phrase "President decides whether a person can or cannot be extradited to demanding country" as referred to in Article 36 paragraph (2) UUE bears the meaning that President can reject extradition request even if

court order states it grants the request or accept extradition request even if the court rejects it. Therefore, a big question arises: what is the real meaning, function and legal force of judicial decree in extradition process?

According to the general explanatory note to UUE, the decision on extradition request is not made by a judicial body, but by an executive body, so the final level is in the hands of the President, based on legal advice from the Minister of Justice. SR. Sianturi states that the role of judge of the state that will extradite serves as advisor for the government to determine whether extradition can be done (1996, p.118). Since it only serves as advisor, presidential decree does not have to depend on the content of advice in judicial decree. President's political decision related to extradition request can be or be not the same with legal decision in judicial decree.

President has no legal obligation to comply wholly or partially with the content of legal order just like legal obligation of any legal subject to implement judicial decision and order in general (executorial force). Judicial decree is only one of the considerations for President in making political decision on extradition, besides other consideration from Minister of Justice, Minister of Foreign Affairs, Attorney General and Chief of Indonesian National Police.

In the case of respondent for extradition, extradition was requested for the South Korean citizen in the name of Gyu Min Lee als Lee Gyu Min als Lee Shiwo by the United States (US). The respondent for extradition was accused of committing sexual abuses (sexual abuse in the second degree) with various subjection of 5 years of criminal imprisonment, violence crime (assault in the fourth degree) with subjection to 5 years of criminal imprisonment and light crime of strangulation with subjection to 1 year of criminal imprisonment. According to the panel of judges, the crimes are equal (double criminality) to Law Number 23 Year 2004 on Removal of Domestic Violence. However, because *tempus delictie* of crime occurring in US had been expired according to KUHP, the public prosecutor's extradition request was declared rejected (South Jakarta District Court, 2020, pp. 8, 60 to 62).

There is no extradition agreement between Indonesia and US until now, but it has one with South Korea that was legalized with Law Number 42 Year 2007 concerning legalization of Extradition Agreement between Republic of Indonesia and Republic of Korea. Regardless of

non-existence of agreement with US, based on the reciprocity principle, President may take other decision based on consideration out of legal consideration (political, economic, det.). This is also in line with the consideration of the judicial decree that:

"Considering, that even if extradition request is declared rejected but in accordance with the provisions of Article 33 paragraph (2) Law Number 1 Year 1979 concerning Extradition, this order along with letters related to this case must be immediately handed over to Ministry of Law and Human Rights to be used further as materials of consideration" (South Jakarta District Court, 2020).

According to Grotius, based on the theory *aut punere aut dedere*, any country is requested to hand over perpetrator requested by demanding country, even if there is no extradition agreement between the two countries, since Grotius argues that every criminal perpetrator must be punished (Ivan Anthony Shearer, 1971). Without international agreement, cooperation can still be performed only based on good relations and magnanimity of the parties which may change any time. The legal basis of cooperation is not as strong as that in international agreement (I Wayan Parthiana, 2015).

In the writer's opinion, what is considered and decided by the judge in relation to the extradition request should guide the President as the final determiner. However, it is understandable that the extent of political interest and relations with the demanding country serves as an important consideration when compared to the respondent's personal interests, so the President makes a different decision than the judicial decree. To keep legal certainty and good relations with other country, especially the government of respondent's nationality, UUE needs to provide clear clause that judicial decree does not bind President in making decision on extradition request.

Another underlying thing is related to waiting list in president's decision making to reject or grant extradition request. The political process to accept or reject extradition request can be quick or even drag on. According to Article 34 letter a UUE, in case detention has lasted 30 (thirty) days, it can be extended by the court or at public prosecutor's request. The law does not explain the limit of time for such extension, but at least as long as political decision has not been made, by law public prosecutor has the right to propose for extension of detention of respondent for extradition until certainty that the request is accepted or rejected by

president. Such a condition surely harms respondent for extradition's human rights.

E. CONCLUSION AND SUGGESTION.

1. CONCLUSION.

Based on the description above, we may conclude as follows:

- a. Law of examination procedure (investigation, prosecution and proceeding) of extradition case is not regulated in detail in UUE. The legal basis of extradition case procedure referring to the current law of criminal procedure (KUHP) is not entirely relevant, that there are differences in practice, causing confusion of procedure and it is prone to violation of human rights. UUE has not ensured protection of respondent for extradition's human rights and legal certainty in extradition petition process by other country.
- b. Final decision of extradition is at the executive's (president) hand. The proceeding product of extradition case in the form of judicial decree is not binding (having executorial force) and only serves as one of the considerations of whether extradition request is to be granted.

2. SUGGESTION.

- a. KUHP serves as law of case procedure with criminal sanction, while extradition case has no criminal sanction. Therefore, the law of extradition case handling procedure must be set forth separately in UUE, thus UUE should immediately be revised.
- b. Since judicial decree in criminal case only serves as advice, thus any decree can be defied by the executive (president). To maintain the dignity of judicial process, revised UUE should provide or even limit things in presidential decree on extradition that can differ from the content of court order.

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