

ANALYSIS OF CORRUPTION ERADICATION COUNTERMEASURES AGAINST FLEEING CORRUPTORS UNDER INTERNATIONAL LAW (CASE STUDY OF EXTRADITION TREATY BETWEEN INDONESIA AND SINGAPORE)

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Article	Abstract
<p>Keywords: Extradition treaties, Economic Crime, Corruption Eradication</p> <p>DOI: 10.28946/scls.v2i2.4044</p>	<p>Extradition treaties are agreements between countries worldwide that involve the extradition of suspects or perpetrators of crimes, including economic crimes. Extradition treaties are between two countries to prevent transnational or cross-border crimes where the perpetrators flee to another country because they do not want to take responsibility for what they did. Extradition treaties have binding legal force following international law because they are international treaties. The extradition treaty made by Indonesia and Singapore is evidence of their positive cooperation in protecting law enforcement. Over the past few years, suspected Indonesian economic criminals have fled to Singapore with large amounts of money and capital. While Indonesian law cannot be applied to Singaporean territory, in the event of an extradition treaty between Indonesia and Singapore, it would have significant consequences. Suspected economic criminals can be brought back to Indonesia to be sentenced per applicable laws, while Singapore cannot. So this research aims to analyze the Extradition Treaty between Indonesia and Singapore According to International Law (Case Study of Tackling Corruption).</p>

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A. INTRODUCTION

One of the most important things for every country is to have inter-state relations. Technologies such as informatics, telecommunications, and transport have changed the dynamics of crime, which has become more complex and diverse over time. The transport sector has progressed, resulting in faster mobility around the world. However, this positive effect allows an offender to flee to another country to avoid punishment in the country where they committed the crime.

Every country has another country's sovereignty, which must be respected. It is very difficult for law enforcement in another country to arrest a criminal who has crossed the country's borders, whether as a suspect, accused, defendant, or convict.¹

One of the most effective ways to save oneself is to flee to another country to avoid prosecution in one's home country and involve both countries' interests. Crimes committed by individuals often involve the interests of two or even more than one country. This can happen because the crime occurred within or outside a country's territory, or because a person committed a crime in several countries in succession.

On the island of Bintan on Tuesday, 25 January 2022, Indonesia's Minister of Law and Human Rights and Singapore's Minister of Home Affairs signed an agreement at the Leaders' Retreat. Prime Minister Lee Hsien Loong of Singapore and President Joko Widodo represented Indonesia. These countries gather yearly at the Leaders' Retreat to collaborate towards mutual progress. Several agreements were made on extradition, defense and security, and FIR (Flight Information Region) at this Leaders' Retreat.²

The Indonesia-Singapore extradition treaty dates back to 1972, but discussions only started in 2004. The Extradition Treaty is crucial for Indonesia because corrupt individuals have been arrested and most have fled to Singapore, as well as the return of state assets that they have corrupted. This is especially true for those who committed corruption, as was the case with the BLBI (Bank Indonesia Liquidity Assistance) in 1998 and several others. To date, these perpetrators of corruption are still on the run and living in Singapore.³

Any country in the territory of another country should not do anything to demonstrate its sovereignty except with the consent of the country concerned. Crime today can occur all over the world and within countries. Every country has agreed that international cooperation is necessary to combat transnational crime.⁴

This has resulted in an increased level of interdependence and intensity of relations between countries around the world. As a result, international cooperation is required to prevent or eradicate such acts. International treaties can be used to achieve this cooperation, both bilateral and multilateral. International treaties are international legal cooperation consisting of principles and rules governing the actions to be performed by all subjects and objects of international law.⁵

From the perspective of international law, extradition treaties are one type of bilateral international treaty that addresses the reasons for making such treaties in international

¹ Flora Pricilia Kalalo, "Efektifitas Perjanjian Ekstradasi Sebagai Sarana Pencegahan, Pemberantasan, Dan Penghukuman Pelaku Tindak Pidana Internasional," *Lex et Societatis* IV, no. 1 (2016).

² Deli Waryenti, "Beberapa Aspek Hukum Dalam Perjanjian Ekstradasi Antara Indonesia Dan Singapura," *University of Bengkulu Law Journal* 7, no. 2 (2022).

³ Ahmad Naufal dan Sari Hardiyanto Dzulfaroh, "Daftar 23 Buronan Korupsi Yang Pernah Melarikan Diri Ke Singapura," *Kompas*, 2020, <https://www.kompas.com/tren/read/2020/01/16/132644665/daftar-23-buronan-korupsi-yang-pernah-melarikandiri-ke-singapura?page=all>.

⁴ Syarifuddin, "Relevansi UU No. 1 Tahun 1979 Tentang Ekstradisi Dengan Perkembangan Hukum Ekstradisi Internasional (Studi Kasus: Perjanjian Ekstradisi Indonesia Dan Singapura)," *Jurnal Komunikasi Hukum* 2, no. 1 (2016).

⁵ Kurniasih LY Gunawan Y, Sastra VJ, Prakosa AT, Ovitasari M, "The Validity of Turkey-Libya's Agreement on Maritime Boundaries in International Law," *Jurnal Hukum Dan Peradilan* 9, no. 2 (2020): 170-85.

criminal law. Extradition treaties are made between two countries to cooperate to prevent criminals from escaping their country's laws. One way to cooperate is to ask the country where the offender is located to locate, arrest, detain, and hand over to the requesting country. To deal with transnational crimes, a comprehensive mechanism is needed. One of the necessary mechanisms is the institution of extradition.

Extradition between Indonesia and Singapore, particularly concerning corrupt individuals fleeing justice, is carried out to uphold the law and combat transnational crimes. Singapore often becomes a destination for fugitives due to its proximity and strong legal system, making it a critical partner in extradition cooperation.

Extradition can only be conducted through bilateral or multilateral agreements. In this context, Indonesia and Singapore signed an extradition treaty in 2007, which was finally ratified in 2022. The treaty allows for the extradition of offenders whose crimes occurred up to 15 years prior, including corruption and economic crimes.

Extradition is closely linked to territorial sovereignty, as each country has complete territory jurisdiction. When one country requests extradition, the requested country must grant its consent following domestic regulations and international agreements while respecting the principle of sovereignty. Extradition must also take human rights into account, such as prohibiting the return of individuals to a country where they may face the risk of torture.

Extradition reflects international cooperation in combating crime while highlighting the importance of respecting state sovereignty. Through the extradition treaty, Indonesia and Singapore can mutually support each other in enforcing the law without compromising their respective principles of territorial sovereignty.

B. RESEARCH METHOD

This research uses the normative legal research method, a type of literature research focusing on legal norms or rules that guide human behavior that should be done or obeyed. This method examines written legal sources such as laws and regulations, court decisions, and legal literature to analyze legal norms as the basis for regulating community behavior.⁶

This research will examine the regulations and laws governing the right of innocent passage for foreign vessels and aircraft in Indonesia's territorial sea. Data collection will be conducted through a study of relevant documents and analyzed using a statute approach to examine relevant legal provisions and a conceptual approach to understand the underlying legal concepts and principles. The analysis results will be presented in a descriptive-qualitative manner to explain the findings of this research.

C. ANALYSIS AND DISCUSSION

1. Analysis of Corruptors Fleeing Abroad under International Law

Two legal instruments, namely criminal instruments and civil instruments can be used to recover state financial losses. Civil instruments are carried out by the State Attorney or the aggrieved agency against the perpetrator of corruption (suspect, defendant, convict, or his heirs if the convict dies). The investigator confiscates the perpetrator's property, which is then demanded by the public prosecutor to be seized by the judge. Criminal instruments are often used because the legal process is more straightforward and more manageable.⁷ However, it is difficult, especially during the

⁶ Amruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Rajawali Pers, 2006).

⁷ Rebecca Niblock dan Anna Oehmichen, "Local Law Repercussions on EU Extradition Law: Perspectives from Continental Europe and England and Wales," *New Journal of European Criminal Law* 8, no. 2 (2017): 27-116.

proof process, because Corruption is an offense committed by individuals with ties and intelligence. Bambang Purnomo states that the perpetrators of corruption offenses have certain skills or experiences that enable corruption.⁸

Perpetrators of crimes, such as corruption offenders, may flee abroad hoping that they will not be tried in their home country. As countries may have established extradition treaties in advance, it is difficult for offenders to escape. Such treaties are not the only factor influencing countries' practices in handing over fugitive criminals.⁹ Significant international treaties can be used to return fugitives to other countries. The process of reciprocity can also be utilized for extradition. This means that a state can return an offender to a requesting state without an international treaty, provided the requesting state repays the act.

As this violates the territorial sovereignty of the state concerned, a state with criminal jurisdiction over an offender who has fled or is on the territory of another state may not arrest or detain the offender directly on the territory where they are located.¹⁰

According to the first paragraph of Article 43 of UNCAC on International Cooperation, states parties shall co-operate in criminal matters, and the second paragraph states that when dual criminality is considered a requirement in terms of international cooperation, it is deemed to have been fulfilled. Furthermore, paragraph 5 of Article 44 on Extradition states that if a state party extraditing on the condition of a treaty receives a request for extradition from another state party with which it does not have an extradition treaty, that state party may consider the convention as the legal basis for extradition. To implement or enhance the effectiveness of extradition, state parties should endeavor to reach bilateral and multilateral agreements, as stated in paragraph (18).¹¹

Law No. 7/2006 on the Ratification of UNCAC was enacted on 18 April 2006. The adoption of this convention enhances international partnerships in the implementation of extradition treaties, mutual legal assistance, surrender of prisoners, transfer of criminal proceedings, and law enforcement cooperation.

In an extradition treaty, states are parties, and usually, each state agrees to implement it. Since the components of extradition treaties follow the 1969 Vienna Convention, they are considered international treaties. Extradition treaties can fall under bilateral or multilateral international treaties. Its status is binding as an international treaty. States parties to a treaty must abide by and honor its implementation due to its binding nature. Of course, the organs of the state must take the necessary measures to ensure that the treaty is implemented.

An extradition treaty is a legal instrument that enables a country to request the surrender of criminals who have fled to the jurisdiction of another country. In Indonesia and Singapore, the agreed extradition treaty reflects bilateral cooperation to address complex legal issues, mainly because Singapore is often perceived as a haven for Indonesian corruptors.

This treaty is legally binding for both countries under the principle of *pacta sunt*

⁸ Paul Arnell, "The Contrasting Evolution of The Right to A Fair Trial in UK Extradition Law," *The International Journal of Human Rights* 22, no. 7 (2018): 87-869.

⁹ Weiyu Zhang Yipeng Xi, Anfan Chen, "The Expression of Cultural Identities in Hong Kong's Anti-Extradition Law Amendment Bill Movement: A Semantic Network Analysis of Tweets," *Social Science Computer Review* 40, no. 6 (2021).

¹⁰ Abdul Wahid, "Pemberlakuan Hukum Ekstradisi Bagi Pelaku Tindak Pidana Korupsi," *Jurnal USM Law Review* 6, no. 1 (2023).

¹¹ Zhanat Askarovna Mamitova, "On The Implementation of Article 20 of The United Nations Convention Against Corruption Into The Criminal Legislation of The Republic of Kazakhstan," *Life Science Journal* 11, no. 5s (2014).

servanda, meaning that the parties are obligated to adhere to the agreements they have signed. Corruption is included as an extraditable offense due to its significant impact on state finances and public welfare. This arrangement demonstrates the commitment of both nations to support more effective and transparent law enforcement.

However, implementing the extradition treaty must respect the sovereignty of each country. As the requested state, Singapore has the right to evaluate requests based on its domestic laws. For instance, extradition is only possible if the offense is also recognized as a crime in Singapore (the principle of double criminality). The extradition process must also follow clear legal procedures, protecting the suspect's rights. In practice, the legal position of this treaty strengthens Indonesia's mechanism to bring corruptors back to the homeland. It also underscores that international cooperation in combating corruption requires alignment between domestic and international laws to ensure effectiveness and fairness.

The inclusion of corruption is an extraditable offense in the treaty between Indonesia and Singapore, resulting from mutual recognition of its severe impact on the economy and social stability. This inclusion is influenced by legal and practical factors related to the treaty's legal standing.

As a legally binding instrument, the extradition treaty requires both countries to agree on a list of extraditable crimes. Corruption, as a serious crime often involving cross-border money laundering, is a priority for Indonesia to include in the treaty. By listing corruption as an extraditable offense, Indonesia strengthens its efforts to recover state losses from corrupt individuals who flee to Singapore.

Recognizing the principle of double criminality affects the inclusion of corruption in the treaty. Both countries must have aligned legal provisions criminalizing corruption so that extradition can proceed. The legal position of the treaty supports the harmonization of regulations on economic crimes and corruption between Indonesia and Singapore, facilitating the execution of extradition. The legal framework of the extradition treaty between Indonesia and Singapore allows corruption to be recognized as an extraditable crime, reaffirming both countries' commitment to tackling corruption more effectively.

2. Extradition Treaty between Indonesia and Singapore

An extradition treaty is an international agreement written and made between two or more countries. Its content relates solely to extradition and is usually validated through ratification. International treaties can be written or unwritten. Written international treaties are also considered one of the sources of international law, according to Article 38 of the Statute of the International Court of Justice.

Indonesia is involved in international agreements. Due to their limited capabilities, the mutual need among countries worldwide led to international agreements. To achieve international agreements, countries worldwide cooperate due to the complexity of each country's problems.¹² The DPR must approve any international agreements made by the Indonesian government with other countries, including the bilateral extradition treaty with Singapore.¹³

Since 1998, the Indonesian government has endeavored to reach an Indonesia-Singapore Extradition Treaty every time it speaks with the Singapore government in bilateral and regional meetings.

¹² Yordan Gunawan, *Hukum Internasional: Sebuah Pendekatan Modern*, Cetakan I, (Yogyakarta: Pustaka Pelajar, 2021).

¹³ I Hardeka, "Posisi Dewan Perwakilan Rakyat Dalam Polemik Perjanjian Bilateral RI-Singapura," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 2, no. 1 (2022): 34-57.

There are nineteen articles in the extradition treaty between Singapore and Indonesia which stipulate that both countries will extradite to the requesting country any person who has fled and is found in the territory of the requesting country, whether it is still under investigation (suspect), prosecution (defendant), or has been convicted (convict). This extradition treaty defends the national interests of Indonesia and Singapore. Cooperation and the development of an effective legal framework are essential to achieve an extradition treaty. Therefore, Indonesia can easily prevent, tackle, and eradicate transnational criminal offenses.

The extradition treaty has been debated for years and has yet to materialize from the presidency of President Soeharto to President Susilo Bambang Yudhoyono. The eleven rounds of negotiations showed that policymakers from both countries were keen to work together to resolve the issues that had been agreed upon.¹⁴

Due to the different legal systems in Indonesia and Singapore, this extradition treaty was not recognized until 2007. However, further research shows a plausible reason why it has not been done. This is because Singapore can accommodate criminals, especially those from Indonesia. Singapore wants to be Asia's tech and financial center, so it doesn't care where the investment comes from.¹⁵

Some of the key legal elements set out in the extradition treaty between Indonesia and Singapore include:

- a. This extradition treaty is adaptive.
- b. Using the principle of retroactivity, this agreement applies retroactively from the date of promulgation, covering the previous 18-year period.
- c. There is no principle of expiry, as the agreement is valid for 18 years.
- d. Recognizing legal smuggling through the offender's nationality change after committing a criminal offense.
- e. Adopt the principle of other crimes, which means that both countries will extradite any person who commits a criminal offense, regardless of the type of criminal offense listed in the treaty, as long as both countries consider the criminal offense to be a crime due to technological advancement.
- f. Due to technological advances, the two countries agreed to create an extradition treaty that is progressive, flexible, and anticipatory of today's development, types, and modes of criminal offenses. This violates the principle of legality.

For Indonesia, one of the most important instruments is the extradition treaty. As a result, some economic criminals, especially Indonesia's major corruptors, flee the proceeds of their crimes to other countries and hide there. With this extradition treaty in place, it is hoped that they will find it more difficult to escape and can be arrested and prosecuted. For example, Singapore is a former British colony that used the Anglo-American legal system or Common Law. In this system, the courts determine whether a person is extradited, not the government. The court's judgment will determine whether the Indonesian government will request the extradition of the corrupt. The extradition treaty signed by both countries becomes ineffective when it has to be applied by Singaporean law.

Countering transnational crime requires regional and international collaboration, including extradition, transfer of convicted persons, assistance in criminal matters, joint investigations, and transfer of judicial proceedings, which are some of the ways international cooperation occurs. Differences in terminology and definitions of

¹⁴ A. Darmawan, S.A., Ramdhani, M. G., Nadiah, R.S., dan Padillah, "Dampak Ratifikasi Perjanjian Ekstradisi Antara Indonesia Dengan Singapura," *Lontar Merah* 5, no. 1 (2022): 482-94.

¹⁵ Avinasa Suryagilang, "Penundaan Indonesia Dalam Meratifikasi Perjanjian Ekstradisi Dengan Singapura Tahun 2007-2014 (Studi Kasus: Korupsi BLBI)," *Journal of International Relation* 2, no. 4 (2014): 264.

extradition treaties can cause difficulties. In principle, extradition is the surrender of a person on request from the requesting state to the requested state, following an existing treaty. However, this formulation highly depends on the material stipulated in the extradition treaty. Each country's bilateral treaties and the UNCAC Convention govern how to surrender a person.¹⁶

D. CONCLUSION

Perpetrators of crime, such as corruption offenders, may flee abroad, hoping they will not be prosecuted in their home country. This is because countries with criminal jurisdiction over offenders who flee or are in the territory of another country are not allowed to arrest or detain offenders directly in the territory of the country where they are located.

An extradition treaty is a type of written international agreement involving two or more countries and is usually validated through ratification. This treaty only deals with extradition. The extradition treaty between Singapore and Indonesia stipulates that they will extradite to the Requesting State any individual who has absconded and is found in the territory of the Requesting State, be it in the investigation stage (suspect), prosecution (accused), or already convicted (convicted). Regional and international partnerships are essential to combat transnational crime.

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