

IMPLEMENTATION OF EXTRADITION FOR FOREIGN CITIZENS DOING CORRUPTION CRIME IN INDONESIA

Gabriella Adolina Septory¹, Dhey W. Tadeus² and Yustinus Pedo³
Master of Law Study Program, Postgraduate Program, University Of Nusa Cendana
Email: gabriella.septory@ymail.com

ABSTRACT

Many foreign citizens do corruption in Indonesia and escape to other country. The problem is how the implementation of the extradition to foreign citizen who does corruption in Indonesia? and has law system of Indonesia accommodated to solve problem extradition? Approach methods in normative law research are statute, conceptual and case approach. The techniques of collecting law materials are studying document and literature. The techniques of processing legal materials are inventory, systematization, classification and verification. This research prove implementation extradition to Andrian Kiki Ariawan (Australian citizen) can carried out based on extradition treaty between Republic of Indonesia and Australia. This research also prove the law in Indonesia is not complete.

Keyword: *corruption, extradition, foreign citizen*

INTRODUCTION

Article 2 and Article 3 of the Criminal Code adheres to the territorial principle. According to this territorial principle, the question of the environment of the enactment of criminal law on space and place. Therefore, every person whether he or she is an Indonesian citizen or a foreign national committing a crime in the territory of the Unitary Republic of Indonesia will be subject to the provisions of Indonesian criminal law. The problem is that if foreign nationals who commit criminal acts of corruption in Indonesia flee to other countries, can Indonesia prosecute those who commit criminal acts of corruption (foreign citizenship) using Indonesian National Law ?. The answer is that Indonesia can try it using Indonesian National Law through extradition.

Article 4 paragraph (1) of Law Number 1 Year 1979 states that "Extradition of crimes mentioned in the crime list is attached as a text which is inseparable from this Law". Thus, the crimes listed in an extradition treaty between one country and another state to be carried out the extradition. However, in Article 4 paragraph (2) of Law Number 1 of 1979, it is possible for other crimes not mentioned in an extradition treaty to be carried out if there is a policy from the requested country. One example is Andrian Kiki Ariawan (aka Adrian Kiki Ariawan) who is a corrupt BLBI fund worth Rp. 1.5 trillion which can be extradited by the Australian Government to the State of Indonesia. In Article 2 paragraph (1) the Extradition Treaty Between the Republic of Indonesia and Australia does not clearly state the criminal act of corruption, but only includes the crime against bribery. Even though the terms between

bribery and corruption according to Law Number 31 of 1999 which have been revised with Law Number 20 of 2001 have different meanings.

Another problem is related to the principle of not handing over citizens (non-extradition nationality) regulated in Article 7 of Law Number 1 of 1979 states that "Requests for extradition of citizens of the Republic of Indonesia are denied". This has become a polemic for the Indonesian people until now, because of the principle of not extraditing citizens by a country. Maria Pauline Lumowa (which is a list of people searching) involved in the BNI burglary and the Indonesian state suffered a loss of Rp 1.7 trillion. EMH Hirsch Ballin (Minister of Justice of the Netherlands) stated that the extradition attempt against Maria Pauline Lumowa was hampered by citizenship status. Even so, in international law the principle of reciprocity is known, this is as regulated in Article 2 of Law Number 1 of 1979. The principle of reciprocity or the principle of reciprocity, that is if a country wants a good treatment from another country, then that country also must give good treatment to the country concerned. Although there is already an extradition treaty between Indonesia and other countries, it does not provide legal certainty related to the implementation of one's extradition.

ISSUES

The problem is how is the implementation of extradition for foreign citizens committing criminal acts of corruption? and has the Indonesian legal system been accommodating to resolve issues related to extradition?

RESEARCH METHODS

This research is a normative legal research. Normative legal research is a study that studies both positive legal provisions and legal principles, by systematically explaining legal provisions in a particular legal category, analyzing the relationships between legal provisions. The method of approach is the statutory, conceptual and case approach. The aspects studied are the implementation of extradition for foreign nationals who commit criminal acts of corruption and legal arrangements regarding extradition in Indonesia. The technique of collecting legal material uses document studies and literature. Document study techniques and literature in this study can never be released from scientific literature. The legal processing techniques are inventory, systematization, classification and verification. All legal materials are analyzed prescriptive juridical.

DISCUSSION

1. Implementation of Extradition for Foreign Citizens Committing Criminal Acts of Corruption

a. Chronological Cases of Corruption

Andrian Kiki Ariawan who served as President Director of PT. Bank Surya Tbk committed corruption together with Deputy Commissioner of Bank Surya Bambang Sutrisno in the period 1989-1997 and caused the state a loss of Rp. 1.5 trillion. The crime is approving the granting of credit to 166 companies / debtors groups formed by and or under the control of Andrian Kiki Ariawan and Bambang Sutrisno, namely PT. Surya Supratama Finance Tbk, PT. Tapaksari Kertasama, PT. Tangkil Jaya Makmur Raya, and others, who do not carry out operational activities or paper companies in the amount of Rp1,030,000,000. At the time of the account of PT. Bank Surya at Bank Indonesia has a negative balance, namely since October 10, 1997 and has been declared a frozen operation bank (BBO) due to the disbursement of a large amount of credit, which resulted in the liquidity of Bank Surya being depleted. Bank Indonesia intervened by providing a Discount I facility on 31 October 1997 in the amount of Rp 330,537,000,000 and discount II on 12 November 1997 in the amount of Rp 384,340,000,000. Then by Andrian Kiki Ariawan and Bambang Sutrisno the money was used to conduct interbank market transactions and lending through clearing through Bank Indonesia to 103 fictitious companies.

When the maturity of the discount facility cannot be returned by Bank Surya to Bank Indonesia. Until it was declared an Operational Frozen Bank by the Government in April 1998, Bank Surya's debit balance amounted to Rp1,963,897,431,978.17 or at least a total of Rp 1,515,025,000,000. Andrian Kiki Ariawan who is a convict was tried in absentia at the Central Jakarta Court after being properly summoned several times, but was never present. The last summons was through the mass media namely Terbit and Bisnis Indonesia daily on April 4, 2002. Andrian Kiki Ariawan was threatened with criminal offenses in Article 1 paragraph (1) sub a jo Article 28 jo Article 34 letter c of Law Number 3 of 1971 jo Article 55 paragraph (1) number 1 jo Article 64 paragraph (1) of the Criminal Code as the primary indictment of the Public Prosecutor.

Decision of the Central Jakarta District Court Number: 899 / Pid.B / 2002 / PN.JKT.PST, on Wednesday, November 13, 2002, it was declared legally proven and

convinced guilty of committing a criminal act of corruption and sentenced to life imprisonment. However, after being decided by the Central Jakarta Court Andrian Kiki Ariawan made an appeal against the Central Jakarta High Court. In the process of inspection Andrian Kiki Ariawan escaped and fled to Australia. The Central Jakarta High Court ruled that Andrian Kiki Ariawan was guilty of a life sentence on June 2, 2003 in Decision Number 71 / PID / 2003 / PT.DKI.

b. Extradition Implementation for Andrian Kiki Ariawan Who Commits Corruption in Indonesia

Article 2 paragraph (1) The Extradition Treaty Between the Republic of Indonesia and Australia does not mention corruption, but only states about bribery. The meaning of bribery is different from corruption according to Law Number 31 of 1999 which has been revised with Law Number 20 of 2001 that bribery or bribery is one form or type of corruption, whereas corruption does not only cover bribery . The regulation is not in accordance with what is regulated in Law Number 1 of 1979 (especially in the attachment to this Law). This has led to the idea that, in making an extradition treaty with Australia, the Indonesian Government was not careful in including the types of crimes the perpetrators could extradite.

Even so, Andrian Kiki Ariawan can be extradited to Indonesia. In Article 2 paragraph (2) and Article 2 paragraph (3) of the Extradition Treaty Between the Republic of Indonesia and Australia, the Australian Government considers requests made in writing by the Government of Indonesia to extradite Andrian Kiki Ariawan. In addition, both Indonesia and Australia have signed and ratified the United Nations Convention Against Corruption. The State of Indonesia signed it on December 18, 2003 and ratified it on September 19, 2006, while Australia signed it on December 9, 2003 and ratified it on December 7, 2005. Therefore, both Indonesia and Australia have regulations relating to corruption. The State of Indonesia has Law Number 31 of 1999 which has been revised to Law Number 20 of 2001, while Australia has an Independent Commission Against Corruption Act 1988.

After Andrian Kiki Ariawan was found guilty by the Central Jakarta High Court, Andrian Kiki Ariawan, who at that time had fled abroad, became an Interpol prey or entered the wanted list by the issuance of Red Notice No. A-41 / 1-2005 on March 28, 2005. With the collaboration between the Indonesian National Police and the Australian National Police, through a Memorandum of Understanding Between The Government of

the Republic of Indonesia and The Government of Australia on Combating Transnational Crime and Developing Police Cooperation , then Andrian Kiki Ariawan is known to be in Australia.

International Police Canberra can identify someone named Adrian Adamas who has an identity that is in the Red Notice. On 28 November 2008 Andrian Kiki Ariawan was arrested by the Perth Police. Andrian Adamas who has an Australian passport Number: E1018205. Even so, the Government of Indonesia still wants to carry out the extradition. This is as stated by I Wayan Parthiana that "For the requesting country the important thing is the person requested, whether its own citizens or foreigners or dual citizenship even without citizenship can be processed (tried or continued the implementation of the sentence) based on its national criminal law". Decision of the Central Jakarta High Court Number: 71 / PID / 2003 / PT.DKI dated June 2, 2003 jo. The decision of the Central Jakarta District Court Number: 899 / Pid.B / 2002 / PN.JKT.PST dated November 13, 2002 is the legal basis for the extradition of Andrian Kiki Ariawan by Indonesia to Australia. This is as stated in Article 11 Paragraph (2) letter b about Extradition Treaty Between The Republic of Indonesia and Australia. The Government of Indonesia submitted an extradition request against Andrian Kiki Ariawan through a letter from the Ministry of Law and Human Rights of the Republic of Indonesia Number: M.IL.01.02-02 dated 28 September 2005. Australia is a country that adheres to the judicial procedure. Judicial procedure is the approval or refusal to extradite a criminal offender depending on the process of hearing a court hearing in which the offender concerned can declare his right to accept or reject extradition accompanied by a legal advisor.

Andrian Kiki Ariawan filed an objection to the extradition petitioned by the State of Indonesia to Australia at the Perth Magistrates Court (Magistrates of the State of Western Australia), and the reason for the objection was that the prosecution and appeal carried out in absentia in Indonesia was considered unfair or unfairness and the implementation of criminal offenses in correctional institutions in Indonesia will violate their human rights, because according to him it is seen as contrary to international human rights standards. Andrian Kiki Ariawan's statement was based on Article 3 letter g of the United Nations Extradition Law Model of 1990. Romli Atmasasmita stated that this principle was based on the protection of the rights of someone who was asked for extradition because in the trial process in absentia, the defendant did not get the

opportunity to defend so that the judicial process was seen as violating the "fair trial, impartiality and integrity" of the court. However, the Australian Court (Magistrates of the State of Western Australia) on October 16, 2009 ruled that Andrian Kiki Ariawan could be extradited to Indonesia. Then, Andrian Kiki Ariawan submitted an appeal to Full Federal Court in the state of Western Australia. On 15 February 2013, Full Federal Court of the state of Western Australia decided that it would grant Andrian Kiki Ariawan's objections. The Australian Government submitted an appeal to the High Court of Australia (at the level of the Supreme Court) and on 18 December 2013 the High Court of Australia upheld the decision made by the Australian Minister of Justice in December 2010. Based on this ruling, the Australian Embassy through diplomatic memorandum Number: P187 / 2013 formally conveyed to the Ministry of Foreign Affairs of the Republic of Indonesia regarding Memorandum Number: P182 / 2013 concerning the request of the Indonesian Government's extradition of Andrian Kiki Ariawan which could already be submitted to the Government of Indonesia.

2. Legal Arrangements Regarding Extradition in Indonesia

a. Advantages of Legal Arrangements regarding Extradition in Indonesia

1) Legal arrangements that adhere to the principle of justice in absentia.

Article 22 paragraph (3) letter a of Law Number 1 of 1979 regulates decisions based on judicial principles in absentia. The advantage of this in absentia court is to guarantee legal certainty and assets of corruptors can be immediately confiscated and executed. However, the principle of justice in absentia can be implemented if it fulfills several elements as regulated in Article 38 of Law Number 31 of 1999, namely because the defendant lives or travels abroad; an attempt by the defendant to commit an act of defiance, such as running away; and in the event that the defendant has been legally summoned and is absent from court without a valid reason, the case can be examined and decided without his presence. With this in mind, state assets can be returned and are the basis for submitting extradition requests for perpetrators of corruption.

2) Legal arrangements regarding extradition on the basis of good relations

Article 2 paragraph (2) of Law Number 1 Year 1979 states that "In the event that there is no such agreement in paragraph (1), extradition can be carried out on the basis of good relations and if the interests of the Republic of Indonesia want it". This is

known as the principle of reciprocity or the principle of reciprocity. I Wayan Parthiana in his book "Extradition in International Law and Indonesian National Law" states that the perpetrators of crimes on the basis of reciprocity are carried out with several conditions, namely the absence of an extradition treaty between the two countries. reciprocity and there is an extradition request submitted by the requesting country to the requested country.

For example, Hartawan Aluwi, who was convicted in a fraud and embezzlement of money owned by customers of PT Antaboga Delta Sekuritas Indonesia, which was marketed at Century Bank and suffered a loss of Rp408,478,000,000, was deported by Singapore to Indonesia. Extradition on the basis of reciprocity has several aspects, namely wider scope, because the request for extradition can be done to all countries; the process is easier, because it does not require the process as in the extradition agreement; the time is also shorter because it does not go through various processes as in the extradition agreement; and give warnings to perpetrators of crimes that they can be easily extradited even though there is no prior extradition treaty between the countries concerned.

b. Lack of Legal Arrangements regarding Extradition in Indonesia

Article 7 paragraph (1) of Law Number 1 of 1979 concerning Extradition states that "requests for extradition of Indonesian citizens are denied". This is because the State has a duty to protect its own citizens. I Wayan Parthiana stated that "A person's citizenship also indicates a special relationship between the person concerned and his country. The state can give rights and impose certain obligations to each of its citizens while for foreigners those rights and obligations do not apply. In conjunction with the extradition of the obligation of the state to protect its citizens and the rights of its citizens to obtain protection from their country may also arise. As a manifestation of the obligations of the state towards its citizens, which in relation to extradition is its refusal to extradite its own citizens. With this refusal, it means that the state has been asked to provide protection for its citizens. Even so, it turns out that there are exceptions to Article 7 paragraph (2) of Law Number 1 of 1979 which recognizes the principle of not extraditing citizens in a relative / facultative manner, ie the state is asked to make a decision whether to grant or reject a request for extradition from the requesting country against its citizens. Whichever decision taken by the state is requested, as necessary rests with the country itself, as an expression of its sovereignty. However, this is not clearly

regulated in Law Number 1 of 1979. When looking at the case of Maria Pauline Lumowa, which is a criminal offense in the Bank Negara Indonesia burglary worth Rp 1.7 trillion in Indonesia and is now at Netherlands. He has not been able to be extradited by the Netherlands until now because he is a Dutch citizen.

Another problem is that in each extradition treaty that has been entered into by the State of Indonesia with several countries such as the Philippines, Malaysia, Australia, South Korea and Hong Kong, it is not regulated in relation to the refusal of extradition of citizens from the requested country. in the territory of the requesting country regardless of whether or not it has criminal jurisdiction for the crime. For example, in Article 5 paragraph (3) of the Extradition Treaty Between the Republic of Indonesia and Australia that if the authorized official does not have jurisdiction over the crimes committed by his citizens, the requested State must extradite the person concerned.

If the opposite is happening on the ground, then what will the Requesting State do if the Requested State does not want to extradite its citizens and does not have jurisdiction for crimes committed by the citizens whose extradition is requested? This will be very beneficial for the perpetrators of corruption because he will enjoy impunity and have a negative impact on diplomatic relations between the two countries. To prevent that, the extradition treaty must regulate the obligation to bring the citizens to justice. I Wayan Parthiana stated that "It is mandatory for the state to be asked to judge its own citizens, with the intention that the sense of justice of the people of the requesting country can be restored. By judging by themselves, then the person who is asked certainly cannot avoid criminal lawsuits for his actions ”.

Furthermore, Law No. 1 of 1979 which is the legal basis for making extradition agreements with other countries has not yet been regulated in relation to criminal jurisdiction over cases of corruption committed by citizens themselves. However, if the Government of Indonesia wishes to revise Law Number 1 of 1979 related to the obligation to prosecute citizens requested by the state, then the thing to know is that a country must have criminal jurisdiction in prosecuting its own citizens. Jurisdiction in international law is the right, power or authority of a country in making, enforcing, implementing and or enforcing its national law on an object of law both existing or occurring within or outside the boundaries of its territory. Criminal jurisdiction suitable for the country of origin of the offender (the country is requested) is based on the principle of active citizenship. Criminal jurisdiction is first based on who is the

perpetrator of the crime and where the crime took place, as well as the interests of the country concerned to create, implement and enforce its national criminal legislation. With regard to who is the culprit, the emphasis is on the nationality actors of the country concerned. Another lack of legal arrangements regarding extradition in Indonesia is that there are no stipulations on what conditions are taken into account in extraditing their own citizens to the requesting country. This is as regulated in Article 7 paragraph (2) of Law Number 1 of 1979.

CONCLUSIONS

First, the implementation of extradition for foreign nationals who commit acts of corruption based on extradition agreements made by the State of Indonesia with other countries, for example the implementation of extradition of Adrian Kiki Ariawan by Australia to Indonesia based on the Extradition Treaty Between the Republic of Indonesia and Australia, which is an extradition treaty This has been ratified into Law Number 8 of 1994. Second, the legal provisions in Indonesia are not yet perfect to be able to resolve issues related to extradition, because they have deficiencies.

SUGGESTIONS

Researchers suggest that First, the Government of Indonesia in making extradition treaties must be based on Law No. 1 of 1979. Second, in making extradition treaties must also regulate criminal jurisdiction based on the principle of active citizenship.

REFERENCES

- Bambang Prayitno, 25 November 2009, International Criminal Law Principles, available on the website <http://prayitnobambang.blogspot.co.id/2011/09/asas-asas-hukum-pidana-internasional.html?m=1>, accessed October 25, 2016
- Deli Waryenti, Extradition and Some of the Problems ", Journal of the Fiat justitia Legal Studies, Vol. 5 No. 2 May-August 2012 Edition, Lampung: Faculty of Law, University of Lampung
- Emerson Yuntho, August 30, 2005, BLBI Corruption and In Absentia Trial, available on the website <http://m.hukumonline.com/berita/baca/hol13502/korupsi-blbi-dan-persidangan-iin-absentiai>, accessed May 28 2017
- H. Hadari Nawawi, 1983, Social Research Methods, Yogyakarta: Gajah Mada University Press;
- Indonesian Citizens Outside the Territory of Indonesia, Thesis, Semarang: Master of Law Program at Diponegoro University.
- I Wayan Parthiana, 2006, International Criminal Law, Bandung: Yrama Widya;
- I Wayan Parthiana, 2009, Extradition in Modern International Law, Bandung: Yrama Widya;

I Wayan Parthiana, 2015, *International Criminal Law*, Bandung: Yrama Widya;

Liputan6, 27 February 2009, Expert: Maria Pauline Can Be Tried in Indonesia, available on the website m.liputan6.com/news/read/198760/pakar-maria-pauline-bisa-diadili—di-indonesia, accessed on 26 May 2016

NCB-Interpol Indonesia, 20 June 2010, Red Notice, available on the website www.interpol.go.id/id/dpo/red-notice?start=68, accessed on 26 May 2016

Pantas Sianturi, 2005, *Expansion of the Scope of the Enactment of National Criminal Law to Protect*

Romli Atmasasmita, 9 July 2015, *Extradition in Theory and Practice*, Bandung: Padjajaran University, available on the website document.tips/documents/ekstradisi-dlm-theori-dan-practical-2009.html, accessed May 18 2017

Terry Hutchinson, 2002, *Research and Writing in Law*, Sydney: Lowbook Co