



**EXTRADITION BY THE INDONESIAN NATIONAL POLICE OF  
PERPETRATORS OF CORRUPTION FROM INDONESIA, BASED ON THE  
LEGAL PROVISIONS OF THE INTERNATIONAL CRIMINAL POLICE  
ORGANIZATION (ICPO-INTERPOL)**

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**ABSTRACT**

*Interpol is an organization formed to coordinate cooperation between police in countries around the world. Advances in technology, information, and communication have increased the intensity of transnational crime. The extradition treaty has an important role in preventing and overcoming perpetrators of international crimes, especially perpetrators of corruption who fled from Indonesia to other countries, whether they are still suspects, defendants, or convicts. The formulation of the problem in this study is how the role of the Police in the practice of carrying out the extradition of perpetrators of corruption, legal arrangements in the execution of extradition of perpetrators of corruption committed by the Police based on the Constitution of the ICPO-Interpol, and what factors hinder the Police in carrying out international cooperation in the field of extradition. The result of the discussion of the problems that arise in this research is an international cooperation agreement that has been ratified by the two countries, in which the Indonesian Police submitted a request for extradition as a requesting state to the requested state against the fleeing corruption perpetrator. The state government is requested to process the extradition request accompanied by authentic evidence of the complete identity of the perpetrator. The process of carrying out extradition was hampered due to several factors, one of which was the absence of an extradition agreement by the Government of Indonesia with the government of the requested country, where the perpetrators of corruption fled so that the implementation of extradition was hampered or perhaps even rejected by the requested country.*

**Keywords: Extradition, Interpol, Transnational Crime, Corruption.**

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## **A. Introduction**

Today, extradition law is developing very rapidly, mainly due to the emergence of various crimes or criminal acts across national borders that are becoming increasingly sophisticated. Likewise, the extradition law arrangement is no longer limited to extradition treaties but also treaties that specifically regulate international crimes. The institutes involved are integrated into the legislation. Moreover, the introduction of the Treaty on Extradition Model by the UN General Assembly, which can be said to be a combination of codified efforts and progressive development of extradition law institutions by states, is now used as a model followed in the making of extradition treaties, both bilateral and multilateral (Parthiana, 2010).

Extradition under Indonesian Law No. 1 of 1979 is the surrender by a country that requests the surrender of suspected or convicted of committing a crime outside the territory of the surrendering state and within the jurisdiction of the territory of the country that requests the surrender because it is authorized to prosecute and punish it.

Mutual Legal Assistance (MLA) is an agreement between two foreign countries for information and communication to enforce criminal law. This assistance can be a means of examining and identifying people, places, and things, transferring and providing assistance with the immobilization of the tools of criminal activity (Parthiana, 1990).

Globalization has linked a wide range of interests, including crime. Borderless barriers supported by the development of science and technology have allowed the perpetrators of depravity to relate to each other either cross-culturally or cross-border crime, such as criminals using these advances to flee to other countries. Because the crime of corruption is no longer a national problem but has become a transnational phenomenon (Melani, 2005).

Every state has a legal order to maintain and maintain security and welfare for every citizen or person in its territory. This situation, according to the Convention on Diplomatic Asylum Article 2 becomes an obstacle when the perpetrator of the crime of corruption escapes or is outside the jurisdiction in which the perpetrator commits a criminal

act. Extradition proceedings of a reciprocal nature (cooperation), the limitations of jurisdiction can be linked to each other for the common good (Adolf, 1996).

Like the case of the escaped fugitive convicted of corruption rights (cassie) Bank Bali, Djoko Soegiarto Tjandra aka Joe Chan who has been at large for 11 (eleven) years. Djoko Tjandra escaped in 2009 or the day before the verdict of the judicial review (PK) of his case was knocked down by the judge. After a long disappearance, Djoko Tjandra's name came back in June 2020. He managed to enter Indonesia without being detected by the Directorate General of Immigration, Attorney General's Office, and POLRI. About the perpetrators of escape crimes, any country that has jurisdiction to prosecute the perpetrators of such crimes who hide in other countries, it is not easy to simply arrest and bring the perpetrator of the crime to his home country. So this is where the extradition law system is needed as an effort to cooperate between countries and be able to bridge the sovereignty of the two countries in the framework of prevention and eradication

of transnational crimes (Indonesia, 2020)

The handling of such crimes can be handled through the help of Interpol. Interpol as an international organization has considerable influence in resolving transnational criminal acts in its development. Through Interpol, member states can request assistance in finding and arresting fugitives who, if found, can be extradited to the applicant's country. The assistance provided by Interpol is essentially my spirit already contained in Article 2 of the ICPO- Interpol Constitution which states that Interpol was established to ensure and advance the widest possible mutual assistance among all police forces and to prevent the fight against ordinary criminal acts.

In implementing this, the National Central Bureau (NCB) – Interpol is required to be in frequent contact with ICPO-Interpol because the organization often circulates arrest warrants throughout member countries to allow all Interpol members to search for suspects or perpetrators of crimes sought and arrest them. The birth of this organization makes it easier for the police of each member state to combat international criminal acts. Including cooperation with

the Police, carried out through the exchange of information, the issuance of notices, joint investigations, training of police staff, and cooperation in the pre-extradition process of criminal offenders (Septiani, n.d.).

From the above description of the escape of perpetrators of corruption crimes who fled the country to be tried by the country that owns the jurisdiction, researchers are interested in researching with the title " Extradition by The Indonesian National Police of Perpetrators of Corruption from Indonesia, Based on The Legal Provisions of The International Criminal Police Organization (ICPO-INTERPOL)".

### **B. Research Problem Formulation**

1. What is the role of the Indonesian National Police in the practice of extradition of perpetrators of corruption?
2. What are the legal arrangements for the execution of extradition of corruption perpetrators by the Indonesian National Police based on the Constitution of the ICPO-Interpol?
3. What are the factors that hinder the Indonesian National Police in

implementing international cooperation in the extradition field?

### **C. Research Method**

The method used in this research is the normative juridical or library research method. The nature of the research used in this research is descriptive-analytical, namely by explanatory (explaining) or describing the applicable laws and regulations associated with legal theories and the practice of implementing positive law concerning problems. This writing uses data secondary with primary legal material in the form of legislation, materials secondary law such as books and scientific works, as well as tertiary legal materials in the form of a dictionary. The analysis was carried out using data analysis methods qualitative which is an analytical perspective. With this analytical technique, it is hoped that the core ideas and theories that become the object of the problem can be drawn so that conclusions can be drawn using deductive logic, where drawing these conclusions uses a reasoning process from general to specific statements.

## **D. Result and Discussion**

### **1. The Role of the Police of the Republic of Indonesia in Practice of Carrying Out Extradition Against Perpetrators of Corruption Crimes**

#### **a. Extradition Proceedings against Perpetrators of Corruption**

Criminal acts of corruption include economic crimes in the national interest and are always related to money laundering which is very detrimental and inhibits the rotation of the country's economic wheels. Where the perpetrators of this crime of corruption always have various ways to escape from the snare of the law, one of which is by avoiding or fleeing abroad while the legal process is underway or has been decided. Because of the limited authority over the jurisdiction of a country's law enforcement, making these perpetrators of corruption easily waltz and hide abroad. Where to bring back the perpetrators of this crime requires international cooperation with countries that have been a place of escape and paradise for the corrupt. One of them is by pushing for an extradition treaty.

To support the extradition of perpetrators of corruption who fled abroad, the United Nations has even

issued a Model Treaty on Extradition based on UN General Assembly Resolution No.45/117 of December 14, 1990 (UN, 1990), which serves as a model of reference for the creation of national extradition laws, as well as the 2003 UNITED NATIONS Convention against Corruption which also specifically regulates the return of assets (asset recovery) resulting from corruption. Given the problems in the search, arrest, investigation, and even surrender of the perpetrators of the crime, it is based on how very important there is a need for cooperation between countries or police cooperation in combating criminal corruption through extradition.

Extradition is important in terms of preventing and combating transnational crime, especially corruption, not only for Indonesia but all countries in the world. In overcoming this, cooperation between countries, including law enforcement, is needed by the Police, prosecutors, and the Minister of Justice as their liaison. Regarding the context of relations between nations, in addition to extradition, Mutual Legal Assistance (MLA) is also used as a mechanism in preventing and combating transnational

crimes, including corruption being one of them.

Indonesia already has a law that is an umbrella from MLA, namely Law No. 1 of 2006 on Mutual Assistance in Criminal Matters that has been in force since March 3, 2006. This law was made to respond to the development of handling cases that often have to involve other countries, such as the running of corruptors abroad and the hiding of assets from corruption abroad. Law No. 1 of 2006 also regulates the scope of MLA, MLA procedures, and the distribution of confiscated criminal proceeds (sharing forfeited assets) to countries or countries that help, either for operational or other costs stipulated in Article 57 of Law No. 1 of 2006.

b. Interpol's Role in The Extradition Of Perpetrators of Corruption

International Criminal Police Organization (ICPO), with the password (telegraphic address) "Interpol" used in communication between member states. The establishment of ICPO-Interpol, among others, has the vision to help create a safe world and aims to provide special services for law enforcement to create international cooperation in the fight against

international/transnational crime. To be a world organization that excels in supporting all organizations, bodies, and institutions that have a mission in preventing and combating international crime by:

- 1) cooperate both globally and regionally;
- 2) conduct the timely, accurate, relevant, and complete exchange of information;
- 3) providing international cooperation facilities;
- 4) coordinate the joint operational activities of the angora countries; and
- 5) provide practical instructions on how to prevent and deal with crime (Hasan & Nina Naramurti, 2013).

The purpose of ICPO-Interpol is to ensure and develop the broadest cooperation between all police forces, on the laws of a country and with the spirit of universal human rights, and to build and develop institutions that contribute effectively to the prevention and eradication of crime (Hasan & Nina Naramurti, 2013).

c. The Role of the National Police as NCB-Interpol Indonesia in the Practice of Conducting Extradition against Perpetrators of Corruption Crimes

The International Criminal Police Organization (ICPO-Interpol) is an

international criminal police organization. The word "Interpol" comes from two words: international and police or international police commissions. Interpol is a strictly non-political, non-religious, non-racial organization, in which police forces of more than a hundred different countries cooperate (Siswoyo, 2011).

In the implementation of extradition, there are agencies of the Ministry of Foreign Affairs, The Minister of Justice, Police, and Prosecutors who take the role. The role of the Indonesian police in the process by the Extradition Law is as follows:

- 1) Based on requests for the detention of requests submitted through Interpol Indonesia channels or diplomatic channels or directly by post or telegram, may make detention on urgent grounds, before the receipt of extradition requests;
- 2) Upon receipt of an extradition request from the requesting countries, make the detention of the requested person if the request for detention is submitted by the request for detention by the requesting state;

- 3) Conducting an examination of the person requested for his extradition by being recorded in the news of the event and immediately submitted to the local Prosecutor of the Republic of Indonesia;
- 4) Also, consider the President regarding the approval or rejection of extradition requests as a matter of consideration together with the determination of the court (Maringka, 2018).

Interpol's main task is to track, arrest and examine the person requested for extradition. According to international law, police from one country cannot enter the territory of another country to catch a criminal who has committed a crime and flee to another country. Interpol helps in situations like this to trace the whereabouts of the suspect or convict for each member state.

The International Criminal Police Organization, better known by its telegram address, Interpol, is an organization formed to coordinate cooperation between police forces around the world, precisely for its member countries. Indonesia itself has a

National Central Bureau or better known as NCB-Interpol Indonesia as a body or agency appointed as the National Central Bureau to ensure relations with various domestic government departments, with NCB-NCB other countries, and also the ICPO-Interpol General Secretariat. The establishment of NCB-Interpol Indonesia is juridically based on the Constitution of ICPO-Interpol Article 32.

## **2. Legal Arrangements in The Execution of the Extradition by Police based on The Constitution Of ICPO-Interpol**

### **a) Regulation of Extradition Execution Law According to Law No. 1 of 1979 on Extradition**

To arrest perpetrators of corruption who fled abroad, in general, every country feels the need for cooperation between countries in the search, arrest, and surrender of perpetrators of these crimes. For this, each country already has an extradition law as a reference regulation in the process of implementing extradition, as well as the existence of extradition treaties with other countries. The mechanism of implementing extradition consists of several stages that must be carried out from the beginning until the handover of perpetrators of

corruption crimes from corrupt refugee countries or countries requested to the state-requester or who applied, in this case, is Indonesia.

In the pre-extradition stage, before the extradition request is generally the first step taken by Interpol is to get information about the whereabouts of the perpetrators of corruption crimes sought. After learning of his whereabouts, only a request for arrest and temporary detention (provisional arrest). The search, arrest, and detention of perpetrators of corruption crimes are carried out in cooperation through Interpol, but there are also countries with corrupt escapees who carry out executions following the provisions of the law in their country by requiring the submission of extradition requests through diplomatic channels such as the Malaysian.

As an extradition applicant country, Indonesia immediately submits an extradition application through diplomatic channels to the Minister of Justice of the Republic of Indonesia, in which case there has been no extradition treaty between Indonesia and the requested state. Then the Minister of Justice submits to the President by Article

22 paragraph 22 of the Extradition Act, but if there is an agreement between the two countries if the request has met the requirements, the Minister of Justice sends the request letter to the Police Chief or Attorney General to conduct an examination (article 24). After the completion of the examination by the Police, the extradition file is submitted to the State Prosecutor's Office (Article 26).

Within no later than 7 (seven) days, the State Prosecutor's Office must have submitted to the District Court (Article 27). Furthermore, the District Court held a hearing of the person extradited (Article 33 paragraph 1). If there is evidence requested by the claiming states for confiscation (Article 42), the determination of the court must be declared to be or can not be submitted (Article 43). The application of the court along with all related letters is submitted to the Minister of Justice (Article 33 paragraph 2). Then the determination of the court along with consideration from the Minister of Justice to the President to obtain a decision (Article 36 paragraph 1). Based on these considerations, the President decided whether or not a person should be extradited (Article 35

paragraph 2). The Presidential Decree was conveyed to the requesting countries by the Minister of Justice (Article 36 paragraph 4) and the Minister of Foreign Affairs of the Republic of Indonesia, the Attorney General, and the Police Chief (Article 38).

Furthermore, the Minister of Justice of the Republic of Indonesia informs state officials about the place, date, and the time of submission is carried out (Article 40) including confiscated evidence if any. According to Article 44 of the Extradition Act, if any suspect/defendant/convict is in another country, the Police Chief or Attorney General may ask the Minister of Justice to submit extradition requests to other countries on behalf of the President through diplomatic channels. If the state is asked to grant the extradition request, the person is brought to Indonesia and handed over to the competent authorities (Article 45). The procedure for submission and acceptance is regulated by Government Regulation (Article 46).

Indonesia has had experience in extradition both as a requested country and as a requesting country several times. The Government of Indonesia has processed extradition requests from the

Philippines for suspected U.S. citizens for rape and suspected German citizens of a terrorist who smuggled firearms and ammunition, as well as extradition requests from Australia for suspected Australian citizens for fraud crimes, as well as on Malaysians and Filipinos for drug trafficking for the use of drugs. Submitted to the Republic of South Korea. As a country-requester, some examples are Indonesia requesting the extradition of Kiki Ariawan for the Bank Indonesia Liquidity case to Australia, today regarding Tjoko Tjandra who was also arrested in Malaysia for the Bali Bank corruption case and Red Notice bribery.

b) Legal Arrangement of Extradition Executions Under Extradition Treaties

It should be pointed out some examples of extradition treaties held by Indonesia with its friendly countries, including:

- 1) The extradition treaty between Indonesia and Malaysia on June 7, 1974, which has been ratified by both countries and Indonesia has enacted into national law with Law No. 9 of 1974;
- 2) The extradition treaty between Indonesia and Thailand, June 29, 1978, has been ratified by both countries and Indonesia has enacted in national law with Law No. 2 of 1978;
- 3) The extradition treaty between Indonesia and Australia, April 22, 1992, which has been ratified by both countries and Indonesia has enacted in national law with Law No. 8 of 1994;
- 4) The Extradition treaty between Indonesia and the Philippines, February 10, 1976, which has been ratified by both countries and Indonesia has enacted into its national law by Law No. 10 of 1976;
- 5) Indonesia's extradition treaty with South Korea dated November 28, 2000, which was ratified by both countries in 2007 by Law No. 42 of 2007;
- 6) Indonesia's Mutual Legal Assistance and Extradition Treaty with Iran was signed in Tehran, Iran on December 14, 2016, ratified by both countries in 2019 and Indonesia enacted Law No. 9 of 2019;
- 7) The Extradition Treaty between Indonesia and the United Arab Emirates signed in Abu Dhabi on

February 2, 2014, has been ratified by both countries and Indonesia enacted Law No. 1 of 2019;

- 8) The extradition treaty between Indonesia and the People's Republic of China, signed in Beijing in 2008, has been ratified by both countries and Indonesia enacts Law No. 13 of 2017;
- 9) The extradition treaty between Indonesia and Papua New Guinea signed in Jakarta on June 17, 2013, has been ratified by both countries and Indonesia enacted Law No. 6 of 2015;
- 10) The extradition treaty between Indonesia and the Socialist Republic of Vietnam signed in Jakarta on June 27, 2013, has been ratified by both countries and Indonesia enacted Law No. 5 of 2015;
- 11) The extradition treaty between Indonesia and the Republic of India signed in New Delhi on 25 January 2011, has been ratified by both countries and Indonesia law of the Republic of Indonesia No. 13 of 2014;

Bilateral extradition treaties between the countries of the world:

- 1) The extradition treaty between Poland and Chekoslowakia in 1961;
- 2) The extradition treaty between Austria and Israel 1961;
- 3) Treaty of extraditing between the United States and Japan, March 3, 1978;
- 4) The extradition treaty between the United States and Mexico, May 4, 1978;
- 5) The extradition treaty between the People's Democratic Republic of Laos and Thailand, 5 March 1999
- 6) The extradition treaty between the People's Republic of Laos and Cambodia, 21 October 1999; and
- 7) Agreement between the People's Republic of Laos and the People's Republic of China, February 4, 2002.

Multilateral Agreement on Extradition; Some of the most commonly known regional multilateral extradition treaties in the world include:

- 1) Arab League Convention, 14 September 1952
- 2) European Extradition Convention, 13 December 1957

- 3) Extradition Convention between the United States, February 25, 1981;
- 4) The Simplified Convention on Extradition Procedures of 1995;
- 5) The Convention on Extradition between member states of the European Union, 1996.

### **3. Factors Inhibiting the Police in the Implementation of the Extradition of Perpetrators of Corruption**

There are several obstacles in the process of investigating the perpetrators of corruption crimes who fled abroad in Indonesia. Some of the factors that affect it include:

- a) Sometimes due to the absence of international cooperation by ICPO-Interpol the Government of the Republic of Indonesia with the government of the country where the perpetrator is not criminal of corruption is fleeing or hiding;
- b) Cooperation across internal agencies in Indonesia that is not good is caused by poor bureaucracy were some requirements that must be met by the police to be able to immediately be extradited become late to be met by relevant authorities in Indonesia such as the Prosecutor's

Office, KPK or ministry of justice who are not / less responsive in meeting the required requirements. Thus resulting in the inhibition of the implementation of the extradition by the Police of the Republic of Indonesia in the country where the perpetrators of the crime of corruption fled;

- c) The geostrategic and geopolitical influence of Indonesia as a matter of state power in looking at and responding to the perpetrators of corruption crimes who fled abroad.
- d) There are differences in laws or jurisdictions in each country;
- e) The issue of the lapse of time principle with the principle of the passage of time where Indonesian law adheres to the principle of lapse of time while other countries such as Singapore adhere to the passage of time whose art there is no expiration time limit for crimes and that time can be decided by the court with humanitarian considerations. This difference in principle is certainly an inhibitory factor in the implementation of the extradition

treaty (Hasan & Nina Naramurti, 2013);

- f) Judicial constraints concern the process of determination by the court of the country requested extradition and require careful examination of the evidence so that it takes a short time and some requirements that must still be met by the extradition requesting state following the provisions of the internationally recognized extradition treaty. A diplomatic obstacle is the implementation of the extradition treaty, which in reality often raises the sensitivity of diplomatic relations between the two countries involved in the implementation of the extradition;
- g) As for the factors about bureaucracy. The procedure of requesting MLA assistance involves several institutions both in the requesting countries and in the requested countries so the process will take quite a long time;
- h) Lack of coordination between the states and the requested extradition countries, the difference in the interpretation of the legal system to

the court's ruling, and the suspect or person requested extradition has been handed over to another country or is no longer in the requested country;

- i) Another obstacle in carrying out extradition is the resistance efforts of suspects or people who are asked for extradition to refuse to be returned to the countries of the authorities; and
- j) Furthermore, the absence of an extradition treaty between the requesting countries and the requested countries is also an obstacle in carrying out extradition because there is no basis for applying for extradition (Atmasasmita, 2000).

#### **E. Conclusion**

For solutions that must be done by the Government of the Republic of Indonesia in legal proceedings against perpetrators of corruption crimes who fled abroad to facilitate the Police as a member of NCB-Interpol Indonesia in carrying out extradition, including:

1. Increase the international cooperation of ICPO Interpol with other countries in the field of extradition, so that the Police of the Republic of Indonesia can conduct the process of extraditing

perpetrators of corruption crimes who fled to these countries;

2. Reforming institutions that deal with the existing extradition problem in Indonesia by involving relevant agencies that have the authority to implement the legalization of the requirements requested by international countries to facilitate the extradition process carried out by the Police in the country where the perpetrators of corruption crimes escape, such as police agencies, prosecutors, ministries of law and human rights, immigration, ministry of justice, and the Ministry of Foreign Affairs of the Republic of Indonesia;
3. Foster better diplomatic relations with countries that do not yet have extradition treaties with Indonesia, with the aim that although they do not yet have bilateral or multilateral cooperation agreements, because of good diplomatic relations between the Indonesian government and these countries, the extradition process can be carried out utilizing Mutual Legal Assistance or legal mutual assistance without the need to ratify the extradition cooperation agreement.

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