

## **RETROACTIVE PRINCIPLES IN THE INDONESIA SINGAPORE EXTRADITION TREATY, WHAT IMPACT IT HAS ON THE ERADICATION OF CORRUPTION IN INDONESIA**

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### *ABSTRACT:*

The 2022 extradition treaty between Indonesia and Singapore, with its retroactive basis, is the main focus in the context of law enforcement, especially in efforts to eradicate corruption in Indonesia. The retroactive principle includes the ability of an extradition treaty to permit the extradition of a person for a criminal offence committed before the treaty entered into force. In the context of combating corruption, the existence of retroactive principles can have significant implications. This study aims to analyze the impact of the retroactive principle in the 2022 Indonesia-Singapore extradition treaty on efforts to eradicate corruption in Indonesia. Through a normative legal analysis approach, this study examines the provisions contained in the extradition treaty and their relevance in the context of corruption law enforcement. The results of the analysis show that the existence of retroactive principles in the 2022 Indonesia-Singapore extradition treaty can have a complex impact on efforts to eradicate corruption in Indonesia. While the ability to extradite perpetrators of corruption crimes for acts committed before the treaty came into force may improve the effectiveness of law enforcement, it also raises ethical questions and legal fairness regarding the application of retroactive penalties. This study concludes that the retroactive principle in the 2022 Indonesia-Singapore extradition treaty has significant implications for efforts to eradicate corruption in Indonesia. Therefore, it is important for governments and relevant stakeholders to conduct a thorough evaluation of the impact of such provisions, as well as consider the necessary measures to ensure that law enforcement remains effective while taking into account the principles of justice and human rights.

*Keywords* : Agreement; Extradition; Corruption Eradication

### **INTRODUCTION**

The signing of the extradition treaty between Indonesia and Singapore on January 25, 2022 in Bintan, Riau Islands, attracted the attention of several foreign media and made headlines related to it. The long process leading up to the ratification of the treaty is a follow-up to the previous extradition treaty ratified in 1998. The 1998 treaty did not include provisions on the extradition of corruptors, so with the ratification of the extradition treaty in 2022, the space for corruptors and other criminals to flee to Singapore is increasingly limited. According to Law and Human Rights Minister Yasonna H Laoly, "this extradition treaty has retroactive or retroactive effect in force from

the date of promulgation for the last 18 years". This is in accordance with the maximum expiry provisions stipulated in Article 78 of the Criminal Code.<sup>1</sup>

This extradition treaty allows both countries to hand over criminal offenders, although the type of crime is not directly mentioned in the treaty, but has been regulated in the legal systems of both countries. The scope of the Indonesia-Singapore extradition treaty is that both countries agree to extradite any person found to be in the territory of the requested country and wanted by the requesting state to be prosecuted, tried, or convicted of extraditable crimes. In addition, this extradition treaty will narrow the opportunities for criminals in Indonesia to escape. The reason is, Indonesia already has agreements with regional partner countries such as Malaysia, Thailand, the Philippines, Vietnam, Australia, the Republic of Korea, the People's Republic of China, and Hong Kong SAR. Yasonna believes that with this international agreement, corruptors and drug dealers can no longer take refuge in Singapore. This extradition treaty will create a deterrent effect for criminals in Indonesia and Singapore.<sup>2</sup>

In the current era of globalization and internationalization, the pattern of relations between countries, cross-country communication, and global interaction between peoples has become increasingly complex. This has led to the emergence of various forms of cross-border or transnational crime. The rapid growth of transnational crime emphasizes the importance for countries around the world to have jointly or commonly recognized legal instruments based on international custom. It aims to counter and eradicate transnational crime, as well as promote international security. One of the main challenges in tackling transnational forms of crime is the difficulty in apprehending perpetrators of crimes and presenting them before the courts.

This is due to the tendency of a criminal who commits a criminal in a country to avoid legal liability by going to another country, thus exiting the legal jurisdiction of the country where he committed the previous criminal act. Legal proceedings against criminal acts that have been committed become difficult. In order to arrest and bring back the perpetrator of the crime to the country where the crime occurred, the country concerned needs to coordinate with the country where the perpetrator of the crime is hiding, and request that the country be willing to hand over the perpetrator of the crime.

Many corruptors have fled to Singapore, not only because of its closer geographical location as a transit country, but also because Singapore is often used as a place to launder money from corruption. However, arresting corruptors who fled to Singapore is difficult because the extradition treaty ratified by Indonesia and Singapore does not contain provisions regarding extradition for corruptors. Therefore, the government re-established an extradition treaty with Singapore in

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<sup>1</sup> Tanti Yulianingsih, "HEADLINE: Perjanjian Ekstradisi Indonesia-Singapura, Buron Koruptor Dipulangkan?", *Liputan6.com*, 27 Januari 2022, Diakses 29 Januari 2022, <https://www.liputan6.com/news/read/4870463/headline-perjanjian-ekstradisi-indonesia-singapura-buron-koruptor-dipulangkan>.

<sup>2</sup> Yulianingsih, *Ibid*.

January 2022. In the treaty, it stipulates the extradition of corruptors. This extradition treaty will not only facilitate the process of arresting and repatriating corruption suspects who have fled or are domiciled in other countries, but will also have a positive impact on efforts to optimize asset recovery. It is undeniable that the assets of the perpetrators of corruption are spread not only in one country, but also in various other countries.

According to Yasonna Laoly, "the scope of the Indonesia-Singapore Extradition Treaty includes an agreement between the two countries to extradite any individual found to be in the territory of the requested country, and to be the object of search by the requesting state for the prosecution, trial, or execution of a sentence for an extraditable criminal offence. In addition to stipulating the retroactive validity period, this agreement also regulates the determination of the nationality of the criminal offender determined at the time the crime was committed. The aim is to prevent the occurrence of privileges that may arise due to changes in the citizenship status of criminal offenders with the intention of avoiding legal proceedings. The extradition treaty between Indonesia and Singapore allows both countries to extradite perpetrators of criminal acts, although the type of crime is not directly mentioned in the treaty, but has been regulated in each country's legal system."<sup>3</sup>

This extradition treaty marks a step forward in efforts to eradicate corruption, not only for Indonesia but also for the eradication of corruption on a global scale. Following the ratification of the extradition treaty by both countries, Indonesia and Singapore on August 25, 2022, signed by the Minister of Law and Human Rights of both countries, Yasonna H Laoly stated that "The Indonesia-Singapore Extradition Treaty has retroactive effect, coming into force from its promulgation over the past 18 years. This refers to the maximum time limit as stipulated in Article 78 of the Indonesian Criminal Code. In addition to retroactive effect, this extradition treaty also stipulates that the determination of the nationality of the criminal offender is determined at the time the crime occurred."<sup>4</sup>

This retroactive principle in the extradition treaty allows law enforcement officials and the Corruption Eradication Commission (KPK) to arrest perpetrators of corruption crimes who flee abroad, even though the perpetrators have committed such crimes several years ago. This retroactive principle goes retroactively for 18 years before the law goes into effect. Ali Fikri, Acting KPK, stated, "We welcome and give full support to the extradition treaty between Indonesia

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<sup>3</sup> Agus Sahbani, "Indonesia-Singapura Teken Perjanjian Ekstradisi Cegah Serangan Lintas Batas," *hukumonline.com*, 25 Januari 2022, diakses 29 Januari 2022, <https://www.hukumonline.com/berita/a/indonesia-singapura-teken-perjanjian-ekstradisi-cegah-kejahatan-lintas-batas-lt61efa8c81dc8e/?page=1>.

<sup>4</sup> Maya Saputri, "Indonesia-Singapura Sepakati Perjanjian Ekstradisi, Apa Dampaknya?," <https://tirto.id/indonesia-singapura-sepakati-perjanjian-ekstradisi-apa-dampaknya-gn9v>, 2022, diakses 29 Januari 2022.

and Singapore. Through this regulation, all instruments owned by both countries will provide full support for extradition efforts in law enforcement and eradication of corruption."<sup>5</sup>

For Indonesia, the extradition treaty with Singapore has great significance given the large number of corruption offenders who have fled and hid in Singapore, as well as the corruption proceeds invested there.<sup>6</sup> However, in practice, the extradition process is not easy. When a criminal absconded or is located in the territory of another country, the state having jurisdiction over the offender cannot directly arrest and detain the offender in that country's territory. This led to the impression that the perpetrator of the crime had impunity in the country where he was hiding.<sup>7</sup>

To overcome these juridical obstacles, there is a need to hand over the perpetrators of crimes from a country to the country where the crime occurred. The submission of criminal offenders is carried out in accordance with official requests and conditions stated in the collective agreement. From the description above, the author is interested in explaining:

- 1) How the retroactive application of the principle in the extradition treaty between Indonesia and Singapore can be used to prosecute Indonesian citizens who fled to Singapore for corruption?
- 2) What is the impact of the retroactive principle in the extradition treaty between Indonesia and Singapore on efforts to eradicate corruption in Indonesia?

## **Pembahasan**

### **Application of the retroactive principle in the extradition treaty between Indonesia and Singapore to prosecute Indonesian citizens who fled to Singapore for corruption**

The application of the retroactive principle has been recognized in Indonesia, as explained in Article 28 of the Second Amendment to the 1945 Constitution and the Criminal Code. However, this recognition is limited to gross human rights violations, and does not cover all types of human rights violations. However, with the *lex specialis derogat lex generalis* approach, this is considered not a big problem. The basis of their argument is that the principle of legality, as enshrined in the Constitution and international human rights instruments, is a general rule, while the retroactive principle in the law of human rights courts is a specific rule. The retroactive principle is applied as a special law, so judges are authorized to use general principles.

Relations between Indonesia and Singapore face challenges in the field of international security with the case of the flight of perpetrators of corruption to Singapore.<sup>8</sup> This condition

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<sup>5</sup> Jafrfry Prabu Prakoso, "Koruptor di Singapura Bisa Diekstradisi, Begini Tanggapan KPK," <https://kabar24.bisnis.com/read/20220125/16/1493148/koruptor-di-singapura-bisa-diekstradisi-begini-tanggapan-kpk>, 2022, diakses 30 Januari 2022.

<sup>6</sup> Sefriani, *Hukum Internasional : Suatu pengantar*, Edisi kedua, beton 8 (Depok : Rajawali Pers, 2018), 241.

<sup>7</sup> I Wayan Parthiana, *Hukum pidana internasional dan ekstradisi* (Yrama Widya, 2004), 11.

<sup>8</sup> Natasha Hamilton, Hart, "Indonesia and Singapore: Structure, Politics and Interests," *Contemporary Southeast Asia* 31 N0 2 (2009): 257-58, <https://doi.org/10.1355/cs31-2c>.

prompted the two countries to formulate an extradition treaty. Currently, the term extradition has begun to be known among the Indonesian people, although they do not fully understand the details and scope. Extradition refers to the formal process of handing over a criminal or suspect by one state to another requesting that the offender be tried or serve his sentence.<sup>9</sup> Indonesia has negotiated extradition treaties with several neighboring countries, such as Malaysia in 1974, the Philippines in 1976, and Thailand in 1978. There may also be plans to negotiate similar agreements with other countries. However, the extradition treaty with Singapore only began in 2007 and is currently still in the signing stage and ratification process.<sup>10</sup>

On January 18, 1979, Indonesia officially passed Law Number 1 of 1979 which regulates extradition. Extradition is a form of cooperation between states regulated in international law, especially through international treaties. In addition, in certain contexts, extradition is also part of the internal affairs of a country and therefore falls within the realm of national law, especially through legislation on extradition.<sup>11</sup> This extradition treaty is an effort to overcome and prevent crime, especially between Indonesia and Singapore. Singapore, as Indonesia's closest neighbor, is often a place of escape for perpetrators of corruption crimes. With this extradition treaty, it is expected to be more effective in handling cross-border crime cases.<sup>12</sup> On January 18, 1979, Indonesia passed Law Number 1 of 1979 relating to extradition. Extradition is one form of cooperation between countries regulated in international law, especially through international treaties. In addition, in certain contexts, extradition is also an internal matter of a country, so it is regulated in national law through specific laws and regulations on extradition.<sup>13</sup> This extradition treaty is a way to overcome and prevent crime, especially the countries of Indonesia and Singapore, because the throne as Indonesia's closest neighbor and becomes the second place for perpetrators of corruption crimes.<sup>14</sup>

Corruption crimes have transcended national borders and are now a phenomenon of transnational crime. Therefore, international cooperation is very important in efforts to prevent and eradicate corruption and face the flight of perpetrators abroad. Extradition treaties are considered effective legal instruments in dealing with transnational crimes. In this context, it is important for law enforcement agencies to continue to be encouraged and strengthened in order to operate effectively and carry out their duties and authorities, especially in the prosecution of corruption

<sup>9</sup> Sefriani, *International Law : An introduction*, 243.

<sup>10</sup> Jamin Ginting, "Perjanjian Internasional Dalam Pengembalian Aset Hasil Korupsi Di Indonesia," *Jurnal Dinamika Hukum* 11 No 3 (2011): 455, <https://doi.org/10.20884/1.jdh.2011.11.3.173>.

<sup>11</sup> Syarifudin, "Relevansi Undang-Undang No. 1 Tahun 1979 Tentang Ekstradisi Dengan Perkembangan Hukum Ekstradisi Internasional," *Jurnal Komunikasi Hukum* 2 No 1 (2016): 98, <https://doi.org/10.23887/jkh.v2i1.7284>.

<sup>12</sup> Deni Irwanto, "Arti Penting Perjanjian Ekstradisi Dalam Upaya Pemberantasan Kejahatan Antara Indonesia Dengan Singapura" (Airlangga, t.t.), <https://repository.unair.ac.id/13075/>.

<sup>13</sup> Syarifudin, "Relevansi Undang-Undang No. 1 Tahun 1979 Tentang Ekstradisi Dengan Perkembangan Hukum Ekstradisi Internasional," *Jurnal Komunikasi Hukum* 2 No 1 (2016): 98, <https://doi.org/10.23887/jkh.v2i1.7284>.

<sup>14</sup> Deni Irwanto, "Arti Penting Perjanjian Ekstradisi Dalam Upaya Pemberantasan Kejahatan Antara Indonesia Dengan Singapura" (Airlangga, t.t.), <https://repository.unair.ac.id/13075/>.

cases. Synergy and good coordination between various law enforcement agencies and related agencies are key in fighting corruption. This is expected to significantly reduce the rate of increase in corruption cases in Indonesia, considering that corruption is a systemic and complex crime that requires thorough handling.<sup>15</sup>

The dismantling of a number of corruption cases in Indonesia is not only an internal matter, considering that some corrupt suspects are trying to flee abroad. One of the main destinations for the perpetrators of corruption is Singapore.<sup>16</sup> Corruption crimes have become a serious concern for Indonesia, so prevention efforts are important, one of which is through the practice of extradition. Extradition is a cooperation agreement between countries related to crimes, which aims to pursue perpetrators of crimes who have fled abroad to be prosecuted in the country where the crime occurred. The crime of corruption has now developed into an alarming transnational issue, where its existence can be found in different parts of the world. Therefore, cooperation between countries is key in preventing and overcoming corruption and preventing the flight of criminals to countries such as Singapore which is considered a safe place for corruptors. The Extradition Treaty became the preferred means of legal measures in dealing with this transnational crime.

In order for corruptors not to escape legal responsibility for their actions before this extradition treaty was ratified, a retroactive principle was applied that was retroactive for 18 years. Under this principle, corruptors can be prosecuted in accordance with Article 8 (1). In carrying out its supervisory function in accordance with Article 6 letter b, the Corruption Eradication Commission has the authority to supervise, research, or review agencies tasked with combating corruption and public services. In addition, in exercising its authority as mentioned in paragraph (1), the Corruption Eradication Commission also has the right to take over the investigation or prosecution of perpetrators of corruption crimes being committed by the police or prosecutor's office.<sup>17</sup>

All countries in the world need to have the same understanding and determination to prevent their countries from becoming a refuge for perpetrators of corruption. Thus, corruption can be considered a transnational crime that can arise in the form of organized crime or economic crime, including money laundering. In the Preamble to the United Nations Convention against Corruption (UNCAC), corruption is stated as a transnational phenomenon that affects not only one country, but also society and the global economy as a whole. Therefore, international cooperation in the prevention and eradication of corruption is very important. At the international level, there are

<sup>15</sup> Darmono Darmono, "Ekstradisi Terpidana Kasus Korupsi Dalam Rangka Penegakan Hukum Tindak Pidana Korupsi," *Lex Jurnalica (Ilmu Hukum)* 9, No 3 (2012): 136, <http://portalgaruda.fti.unissula.ac.id/index.php?ref=browse&mod=viewarticle&article=178151>.

<sup>16</sup> King Peter, "Corruption Ruins Everything: Gridlock over Suharto's Legacy in Indonesia (Part II)," *The Asia-Pacific Journal | Japan Focus* 6, no. 3 (2008): 3.

<sup>17</sup> Undang-Undang Republik Indonesia Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi (2002).

various forms of cooperation to overcome corruption, one of which is through bilateral and multilateral agreements between countries that aim to support each other in law enforcement, including in cases of criminal corruption.<sup>18</sup>

There are three stages in making an international treaty, namely negotiation, signing, and ratification. Ratification is an important step that must be taken to bind a country to an international treaty. According to the definition of jurist Mochtar Kusumaatmadja, ratification is the process of ratification or strengthening by the competent body in a country of an international treaty.<sup>19</sup>

The emergence of this extradition treaty can be traced to the application of the principle of international law by Hugo Grotius known as the principle *au dedere au punere*. That is, the country where the crime occurred (*locus delicti*) can prosecute the perpetrator of the crime or hand over the perpetrator to the requesting state authorized to prosecute him. Although the prerequisites of this agreement are not absolute, law enforcement cooperation can be carried out based on the principle of reciprocity, which is also regulated in Law Number 1 of 1979 concerning Extradition in Indonesia. This principle of reciprocity involves common political interests, benefits, and goals, and upholds state sovereignty. Although it does not require a formal agreement, the principle of reciprocity is adequately regulated on a case-by-case basis. In Indonesia, the provisions regarding extradition are regulated in Law No. 1 of 1979.<sup>20</sup>

Meanwhile, extradition also emerged in response to the need for states to enforce the law. With the development of crime *modus operandi*, advances in information technology, and ever-higher mobility in the traffic of people and assets across national borders, extradition is becoming increasingly important as an instrument of international law. In this context, where law enforcement is the primary focus rather than political considerations, extradition is considered an international treaty that has binding legal force and establishes rights and obligations for all parties involved.<sup>21</sup> The Extradition Treaty between Indonesia and Singapore essentially provides for the handover back of suspects or convicts who have fled the jurisdiction of the requesting country, and are currently in the requested country. In it, it is affirmed that internationally applicable legal principles are followed, which have been recognized and recognized in the United Nations Convention Against Corruption. The treaty also specifically specifies the types of crimes that can be subject to an extradition request, including corruption, bribery, counterfeiting and fraud.

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<sup>18</sup> Marcella Elwina Simandjuntak, "Mutual Legal Assistance: Kerjasama Internasional Pemberantasan Korupsi," *Masalah-Masalah Hukum Fakultas Hukum Universitas Diponegoro, Semarang* 42 No 1 (2013): 132, <https://doi.org/10.14710/mmh.42.1.2013.131-138>.

<sup>19</sup> Mochtar Kusumaatmadja, *Pengantar hukum internasional*, Cet. 4 (Bandung : Bina Cipta, 1982), 109.

<sup>20</sup> Syarifudin, "Relevansi Undang-Undang No. 1 Tahun 1979 Tentang Ekstradisi Dengan Perkembangan Hukum Ekstradisi Internasional," *Jurnal Komunikasi Hukum* 2 No 1 (2016): 98, <https://doi.org/10.23887/jkh.v2i1.7284>.

<sup>21</sup> Eddy OS Hiarie, *Pengantar hukum pidana internasional* (Jakarta : Erlangga, 2009), 74.

Further, the deal is designed to take into account new criminal developments that may emerge in the future.<sup>22</sup>

Extradition depends on bilateral or regional agreements between the countries involved, and their implementation follows the principle of reciprocity. In the extradition process, there must be at least two rational considerations on which extradition is based: An agreement between states to prevent the escape of criminals from the legal process, so that no individual or group of criminals can evade legal accountability. The State requesting extradition, i.e. the place where the crime occurred, must have a belief that the receiving State has sufficient capacity and interest to convict the offender, based on solid evidence, substantial interest in the case, and adequate legal infrastructure.<sup>23</sup>

As a sovereign state, it has exclusive jurisdictional rights within its territorial boundaries, known as territorial sovereignty. Within its borders, the state has full power to punish individuals who commit violations of the law. However, this often becomes difficult as criminals flee to the jurisdiction of another country. Under these conditions, the state does not have the authority to carry out acts of a sovereign nature on the territory of another state. This situation encourages stakeholders to carry out international cooperation in order to maintain common order and justice.<sup>24</sup>

Indonesia already has a legal basis for extradition, consisting of Law Number 1 of 1979 concerning Extradition and Law Number 1 of 2006 concerning International Law Cooperation in Criminal Matters (MLTA). The main difference between the two is that extradition treaties aim to hand over suspects (criminals), while MLTA is used to support the process of investigation, prosecution, and examination in the realm of criminal justice, including investigation, seizure, and return of assets proceeds of crime. Extradition requests do not always depend on the existence of previous bilateral or multilateral treaties, as good relations and strong ethical principles between the two countries can be considered more important than the existence of extradition treaties. Therefore, even if there is no extradition treaty, Indonesia can still hand over the perpetrators of crimes to the requesting country. Conversely, obstacles may arise when Indonesia asks criminals who are inside the country for questioning, regardless of the existence of an extradition treaty.<sup>25</sup>

The concept of retroactive application of the principle to corruption is considered an innovative and progressive legal step. However, in practical and academic discussions, this idea can trigger various pro and con opinions because it is considered to violate the principles of

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<sup>22</sup> Syarifudin, "Relevansi Undang-Undang No. 1 Tahun 1979 Tentang Ekstradisi Dengan Perkembangan Hukum Ekstradisi Internasional," 106.

<sup>23</sup> Widodo, *Hukum internasional publik*, Cetakan I : Agustus 2017 (Yogyakarta : Aswaja Pressindo, 2017), 123.

<sup>24</sup> Syarifudin, "Relevansi Undang-Undang No. 1 Tahun 1979 Tentang Ekstradisi Dengan Perkembangan Hukum Ekstradisi Internasional," 97.

<sup>25</sup> Nurlaly Darwis, "Efektifitas Penerapan Undang-Undang Ekstradisi Terhadap Pelaku Kejahatan" *Jurnal Ilmiah Hukum Dirgantara Fakultas Hukum Universitas Dirgantara Marsekal Suryadarm* 8 No 3 (2018): 4, <https://doi.org/10.35968/jh.v8i2.252>.



criminal law, especially the principle of legality, which states that no act can be punished if it has not been determined as an offense in previous laws. Many experts believe that corruption is an extraordinary crime because it harms people's social rights and has far-reaching repercussions, not only for the state but also for the whole society. Therefore, its eradication requires tremendous efforts. In this context, although contrary to the principle of legality, the application of the retroactive principle can be justified as a rational step to deal with corruption crimes that have extraordinary impacts.<sup>26</sup>

### **Impact of Indonesia-Singapore Extradition Treaty for Corruption Eradication in Indonesia**

Corruption has become a serious problem in Indonesia, resulting in devastating impacts on people's social and economic lives. Every day, corrupt practices are increasingly widespread and harm the state both in terms of the number of cases and financial losses caused. Therefore, according to the Audit Board (BPK), the eradication of corruption must be carried out through preventive, detective, and repressive approaches within the legal framework.<sup>27</sup> The preventive strategy aims to identify the factors that trigger corruption. Detective strategies are designed to detect acts of corruption as quickly as possible and with high accuracy. Meanwhile, the repressive strategy aims to provide appropriate legal sanctions quickly to perpetrators of corruption.<sup>28</sup>

The request and acceptance of extradition can be arranged through a treaty. In Indonesia, there are many laws and regulations governing the eradication of corruption. According to Ramelan, there is a thought that in every drafting or revision of laws, it is known that corruption has caused losses to the country's finances and economy. Therefore, existing regulations are often considered less effective in dealing with increasingly rampant and complex corruption.<sup>29</sup> The issue of extradition is often in the spotlight among Indonesians because it relates to cases in which Indonesians were allegedly involved in crimes within the country, but later fled abroad. Once abroad, they seem to be difficult for the government to reach, so the cases are often forgotten. This caused dissatisfaction and many comments from the community.<sup>30</sup>

The extradition treaty between Indonesia and Singapore has special features designed to effectively address legal weaknesses and fraud attempts by criminals. One of them is a provision related to changes in citizenship status which is often used to avoid law enforcement. In this treaty, the change of citizenship status cannot be a reason to refuse extradition, because extradition must

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<sup>26</sup> Vivi Ariyanti, "Implementasi Asas Legalitas dan Retroaktif tentang Tindak Pidana Korupsi dalam Perspektif Hukum Islam," *Al Manahij* 9 No 1 (2015): 169, <https://doi.org/10.24090/mnh.v9i1.519>.

<sup>27</sup> Ramelan, "Penegakan hukum Tindak Pidana Korupsi dan Upaya Kejaksaan Memenuhi Ekspetasi Publik Makalah seminar dalam rangka Dies Natalis Universitas Sebelas Maret ke-28, Surakarta" (2004), 3.

<sup>28</sup> Romli Atmasmita, *Analisis dan evaluasi hukum tentang penyelidikan dan penyidikan tindak pidana korupsi* (Jakarta : Badan Pembinaan Hukum Nasional, 2007), 11–12.

<sup>29</sup> Ramelan, "Penegakan hukum Tindak Pidana Korupsi dan Upaya Kejaksaan Memenuhi Ekspetasi Publik Seminar Makalah dalam rangka Dies Natalis Universitas Sebelas Maret ke-28, Surakarta," 6.

<sup>30</sup> Darwis, "Efektifitas Penerapan Undang-Undang Ekstradisi Terhadap Pelaku Kejahatan 'Trans Nasional Crime,'" 5.

be based on the citizenship status of the offender when the crime was committed.<sup>31</sup> Extradition treaties exist to address situations where criminals attempt to flee to other countries to evade law enforcement in their home countries. In the modern era, a legal system that includes extradition has become increasingly crucial. With the ratification of the treaty, Indonesia has the responsibility to implement it both in field practice and in legislation. Legislatively, Indonesia needs to adjust or harmonize legal regulations related to extradition to be in accordance with existing provisions in international treaties.<sup>32</sup>

In practice, this agreement allows the repatriation of perpetrators of corruption crimes to Indonesia, as well as the return of assets that have been confiscated. Therefore, this extradition treaty is considered a more efficient tool in dealing with corruption problems in Indonesia. However, its implementation requires prior approval or cooperation with countries that want to cooperate or countries that are a place of escape for perpetrators of corruption crimes.<sup>33</sup> Indonesia has a great interest in establishing an extradition treaty with Singapore, so the government is working hard to reach such an agreement. This step is expected to prevent the escape of corruption perpetrators who have the potential to flee to Singapore. This action shows the Indonesian Government's important strategy in combating transnational crime, given that the two countries are geographically close together, making it easier for perpetrators to escape there.

The process of investigating and prosecuting corruption crimes is the first step in repressive efforts to fight corruption. The challenges mentioned above show that combating corruption is not easy. Law enforcement officials must face various obstacles, both related to legal procedures and human resources.<sup>34</sup> As an independent institution that acts as a driving force in the eradication of corruption, the KPK has tried to establish various forms of international cooperation. The two types of international cooperation carried out by the KPK include international assistance and international cooperation, which are explained as follows:<sup>35</sup>

- 1) International Assistance: This is part of international cooperation that serves as a liaison between investigations at national and international levels, including asset recovery. Activities carried out include information exchange, joint investigation, arrest and detention of perpetrators, exchange of evidence and witnesses, requests for mutual legal

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<sup>31</sup> Abdul Malik Mubarak, "Indonesia-Singapura Sepakati Perjanjian Ekstradisi," <https://nasional.sindonews.com/read/666725/13/indonesia-singapura-sepakati-perjanjian-ekstradisi-1643083311>, 2022, Diakses 6 Februari 2022.

<sup>32</sup> T. Nahdah Suci Fanissa, "Analisis Yuridis Perjanjian Ekstradisi Atas Kejahatan Ekonomi Demi Kepentingan Nasional Indonesia" (Sumatera Utara, 2019), hlm 84, <http://repositori.usu.ac.id/handle/123456789/25745>.

<sup>33</sup> Huala Adolf, *Aspek-aspek negara dalam hukum internasional*, Ed. 1, Set. 1 (Jakarta : Rajawali, 1996), hlm 143.

<sup>34</sup> Atmasasmita, *Analisis dan evaluasi hukum tentang penyelidikan dan penyidikan tindak pidana korupsi*, hlm 49.

<sup>35</sup> KPK, "Leaflet yang dikeluarkan oleh Divisi kerjasama Internasional KPK pada Pertemuan Intemasional SEA.PAC (South East Asia Party Against Corruption) ke-8 dalam Lokakarya Internasional bertema Intemational Cooperation and Mutual Legal Assistance (MLA)," (Yogyakarta, 2012) .

assistance, exploration, as well as the return and confiscation of assets resulting from corruption crimes, and others.

- 2) International Cooperation: This cooperation is carried out through a worldwide law enforcement network. Both as a country requesting assistance and as an aid provider, the KPK has built experience and networks with various countries such as the United States, United Kingdom, Australia, Colombia, Singapore, Thailand, Malaysia, Brunei Darussalam, Laos, Vietnam, Cambodia, Hong Kong, China, Japan, Germany, Switzerland, Korea, Netherlands, Timor Leste, Canada, Spain, Dominica, and others. This network is very important because one of the modus operandi of corruption is to use the jurisdiction of foreign countries as a place to hide and store money from corruption.

Article 9 of Law Number 30 of 2002 concerning the Corruption Eradication Commission states that the takeover of investigations and prosecutions of corruption crimes by the Corruption Eradication Commission (KPK) can be carried out for the following reasons:

- a. Public reports of corruption were not followed up by authorities.
- b. The process of handling corruption crimes took too long or was delayed for no apparent reason and could be accounted for.
- c. The handling of corruption crimes is carried out with the aim of protecting the real perpetrators of these corruption crimes.
- d. The handling of corruption itself contains elements of corruption.
- e. There are obstacles in handling corruption crimes due to interference from the executive, judiciary, or legislature.
- f. Other circumstances that according to the consideration of the police or the prosecutor's office make the handling of corruption crimes difficult to carry out properly and can be accounted for.

With this provision, the KPK is authorized to take over corruption cases that are not handled properly by other law enforcement agencies, to ensure that corruption crimes can be eradicated effectively and fairly.<sup>36</sup> Under the law, corruptors can be punished even if they were committed before the law was passed, as long as they have not passed the prosecution period. This means that corruptors arrested following an extradition treaty between Singapore and Indonesia in 2022 can still be prosecuted. The retroactive application of the principle in this case allows the prosecution of acts of corruption that occurred before the law or extradition treaty came into force, provided that it is within the time limit of prosecution prescribed by law. In other words, legal action against corruptors is not limited by the time the new law comes into force during the prosecution period.<sup>37</sup>

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<sup>36</sup> Komisi Pemberantasan Korupsi, *Memahami untuk membasmi=memahami buku panduan untuk memahami tindak pidana korupsi=buku panduan untuk memahami kejahatan korupsi* (Jakarta : KPK (KPK), 2008), 4.

<sup>37</sup> Undang-Undang Republik Indonesia Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi, 2002, Pasal 9.

According to KPK Deputy Chairman Nurul Ghufron, this agreement will be a progressive acceleration in efforts to eradicate corruption in Indonesia. "Through this regulation, all instruments owned by the two countries will provide full support for extradition efforts in the context of law enforcement of both countries, including in the eradication of criminal acts of corruption. This extradition treaty not only facilitates the process of arresting and repatriating corruption suspects who have fled or are domiciled in other countries," he explained. Ghufron added that the agreement will also have a positive impact on efforts to optimize asset recovery. Thus, this extradition treaty can be a milestone step forward in the eradication of corruption, not only for Indonesia but also on a global scale. This is because the assets of the perpetrators of corruption are not only in the country, but also spread in various other countries. Optimization of asset confiscation will contribute to non-tax state revenue (PNBP). With the full support of both countries, the process of arresting and repatriating corruption suspects will become more effective and efficient. This will certainly strengthen law enforcement and eradicate corruption in Indonesia. Furthermore, the agreement is expected to enhance international cooperation in terms of law enforcement and asset recovery. That way, efforts to eradicate corruption can be carried out more comprehensively and comprehensively, considering that corruption is a problem that does not know state borders. In the end, this extradition treaty will have a significant positive impact on efforts to eradicate corruption, both at the national and international levels. With synergy between the two countries, it is hoped that the law enforcement process can run more optimally and assets resulting from corruption crimes can be returned for the benefit of the state.<sup>38</sup>

Furthermore, to resolve problems in the investigation and prosecution of corruption crimes after the ratification of the Indonesia-Singapore agreement in 2022, several strategic steps that need to be taken are as follows:

1) Examination of Suspects and Witnesses Based in Singapore

Because the suspect is in Singapore, Indonesian investigators cannot directly examine suspects and witnesses in the country. Instead, the examination is conducted by investigators from Singapore, while investigators from Indonesia act as companions. This step was taken as a form of respect for the jurisdiction of other countries because suspects and witnesses are outside the jurisdiction of Indonesia. In this process, the investigator is required to make a minutes of examination (BAP). The format of the minutes of the examination must be adapted to the requirements of the courts in Indonesia. To obtain a statement under oath from a local court, an application for mutual legal assistance is required, which is a bureaucratic and time-consuming

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<sup>38</sup> Irfan Kamil, "KPK Nilai Perjanjian Ekstradisi Indonesia-Singapura Beri Dukungan terhadap Pemberantasan Korupsi," *Kompas.com*, 25 Januari 2022, Diakses 8 Februari 2022, <https://nasional.kompas.com/read/2022/01/25/21474431/kpk-nilai-perjanjian-ekstradisi-indonesia-singapura-beri-dukungan-terhadap?page=all>.

process. This procedure is certainly a challenge, especially related to the detention time limit for suspects.<sup>39</sup>

2) Witness Summoning in Singapore

Although witness testimony was urgently needed, their summons were made without coercion. If witnesses are unable to come to comply with the summons of investigators in Indonesia, then their presence cannot be forced.

3) Arrest and Detention

For corruption perpetrators fleeing abroad, investigators in Indonesia can coordinate with other countries through Interpol. If the suspect is successfully arrested by the local police, the arrest and detention process will be carried out in accordance with the jurisdiction of the country.<sup>40</sup>

4) Account Freezes and Blocks

To request assistance in freezing and blocking bank accounts abroad, an attachment in the form of a blocking order issued by the court (court order) is required.<sup>41</sup>

5) Search

In conducting investigations and investigations, the KPK has the authority to request assistance from Interpol Indonesia or other law enforcement agencies to search, arrest, and confiscate evidence abroad. In addition, the KPK can also request the assistance of the police or other relevant agencies to carry out arrests, detentions, searches, and seizures in cases of corruption crimes at hand<sup>42</sup>.

6) Evidence from Overseas Searches and Seizures

Requests for assistance in conducting searches and seizures in other countries must be accompanied by search and seizure warrants, as well as court orders. Although in the Code of Criminal Procedure, the conduct of searches and seizures must be documented in the minutes of procedure, this provision does not always apply in other countries. Therefore, the question is whether evidence obtained from overseas searches and seizures can be accepted as valid evidence in Indonesian courts. The question raises legal complexities, especially related to differences in legal procedures between countries. However, in principle, evidence obtained from overseas searches and seizures can be recognized as valid evidence before Indonesian courts. This can happen if the procedures used in such searches and seizures are deemed to be in accordance with international legal standards and are recognized as fair and reasonable procedures.

## Conclusion

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<sup>39</sup> Atmasasmita, *Analisis dan evaluasi hukum tentang penyelidikan dan penyidikan tindak pidana korupsi* 45–46.

<sup>40</sup> Ibid, Atmasasmita, 56.

<sup>41</sup> Ibid, Atmasasmita, 56.

<sup>42</sup> Ibid, Atmasasmita, 56.

In setting their *modus operandi*, corruptors often take advantage of legal loopholes that limit jurisdiction from one country to another, so the 2022 extradition treaty between Indonesia and Singapore is expected to narrow the space for corruptors who seek to flee to Singapore, even for crimes committed before the treaty was ratified. With this extradition treaty, the Indonesian government plans to apply the retroactive principle retroactively for the past 18 years, so that the corruptor cannot avoid legal liability. The arrest of corruptors fleeing to Singapore by Indonesian law enforcement officials must be carried out in accordance with applicable procedures, as this involves the sovereignty of the two countries involved in the agreement. The 2022 extradition treaty is a response to the efforts the Indonesian government has made since 1998, and is seen as an opportunity for law enforcement officials to be more effective in fighting corruption at home as well as taking action against assets owned by corruptors hidden in Singapore. Although an extradition request aims to hand over the offender to the requesting state, it does not automatically return the assets brought by the offender. Therefore, it is important for the two countries involved to complement each other, both in extradition requests and in cooperation related to the investigation and return of assets obtained from criminal acts. That is, the request for extradition must be accompanied by a request for assistance in the case of investigation and return of property allegedly derived from the crime.

The successful implementation of the extradition treaty between Indonesia and Singapore requires support from various institutions that are ready to assist the government in arresting corruption perpetrators who fled to Singapore. This includes preventive and repressive strategies to ensure that the implementation of the agreement is effective and maximal, while still complying with Singapore's jurisdiction. Because the implementation of extradition involves state sovereignty, a written law is needed to strengthen the commitment of law enforcers, especially in dealing with perpetrators of corruption in Indonesia. To ensure the implementation of extradition agencies in the eradication of cross-border corruption runs smoothly, strong and close diplomatic relations between Indonesia and Singapore are needed. This is an important facility to expedite the extradition process. In addition, Interpol's involvement as an international law enforcement network provides strong security, so criminals lose wiggle room to escape or hide. In national legal proceedings, both countries involved must show seriousness to ensure that court proceedings proceed quickly and efficiently. Cooperation between countries, both in providing mutual support and in the exchange of evidence, largely determines the success of the extradition process. Thus, strong collaboration and mutual support between Indonesia and Singapore is key in efforts to eradicate cross-border corruption.