

## Extradition Agreement As An Enforcement Of Law Instrument In Money Laundering In The Scope Of Transnational Organized Crime

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### Abstract

*Extradition institution is a form of international cooperation that grows as a result of the development of international law. The word "extradition" implies the surrender of perpetrators of criminal acts (escape). An extradition agreement is a strategic prerequisite as an instrument of effective cooperation between countries for law enforcement and justice efforts, especially the efforts of countries in the context of eradicating crime in various countries. One crime that is increasingly prevalent in the current era of globalization is money laundering. This crime has led to the level of transnational organized crime, which is done by transferring money obtained illegally through a series of financial transactions with the intention of making it difficult for all parties to investigate and find out the origin of the money that it changes its nature as if it becomes legal money for later to be used to carry out legal activities.*

*Method used in this study is juridical normative approach. This approach is an approach in the form of understanding literature materials with international convention sources, national legislation official documents, literary books and scientific articles relating to the problem.*

*The results of study showed that the determination of authority in order to approve or reject extradition request is based on three systems, namely the authority of the executive body, the authority of the judiciary and the combined system. Money laundering is a form of crime that develops into trans-organized crime because it is based on protecting the proceeds of crime by hiding or disguising the origin of the proceeds of crime as if it were a legal act and then used for legal activities.*

**Key word:** Extradition, Money Laundering, Trans-organized crime

### Background

Extradition institution is one of the oldest forms of international cooperation in the history of the development of international law. Extradition is often also referred to as "surrender of criminals" and some international legal experts expressly refer to the term "surrender of criminals", in fact is a translation of the words Extradition (English), L 'extradition (French), derived from the Latin "extradere" which means "to surrender". The meaning of the surrender referred to in relation to extradition is the surrender of a person by one country to another, and the surrender is based on the request of another country. <sup>1</sup>

Judging from the function and role of extradition as one of the instruments of effective cooperation between countries for law enforcement and justice, especially in the context of eradicating crime in various countries, many experts believe that extradition agreements are a strategic prerequisite to facilitating law enforcement. This relates to the fact, that until now there is no obligation for a country to surrender a criminal suspect or a convict who fled to the territory of his country without an extradition agreement.

Indonesia has had Law Number 1 of 1979 about Extradition which contains the principles of extradition. One form of a crime that is increasingly prevalent in the current era of globalization is money laundering. This term is more popular than the term money laundering. The Problem of Money Laundering has been known since 1930. The way a person performs a money laundering is done by transferring the money

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<sup>1</sup> National Legal Development Agency, 2006, Legal Analysis and Evaluation of the Extradition Agreement, Ministry of Law and Human Rights, Jakarta, p. 12.

obtained through complicated financial transactions with a view to complicate various needs and find out the origin of the money. In general people assume that derivative transactions are the most important way because of the complexity and power of their coverage through the jurisdictional boundaries. This complexity is then used by money laundering experts to carry out the money laundering process.<sup>2</sup>

In terms of language, money laundering can be termed as money laundering from illicit (dirty) transactions. In the field of national legislation, Indonesia has had a Money Laundering Law, namely Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.

In terms of international relations, the intensity of international relations now shows as if there are no strict national boundaries between countries. The movement of people, capital, goods and services from one country to another is very common and can be done quickly in line with the progress of science and technology and sophisticated information technology. This development, besides having a positive impact on economic development and trade, cooperation between countries, also had a negative impact. This development is very potential for the emergence of various transnational organized crimes).

Recognizing the potential serious threat posed by transnational crimes, the United Nations has issued a convention against the Organized Transnational Crime since 15 December 2000 which has now been signed by 147 countries. On the other hand, international law does not require the requested state to hand over the criminal to the requesting state without an extradition agreement..

### **Problem Formulation:**

1. Basic considerations whether countries refuse and receive a request for extradition from another country
2. Why money laundering is a criminal offense

### **Research Method**

This research was conducted using a normative juridical approach, namely research of library materials which include international conventions, national legislation, official documents which are supported by a review of literary books, especially international legal doctrines related to extradition treaties. and scientific articles. So the source of data in this study is secondary data in the form of library materials. Data collection and analysis techniques use literature study data collection techniques and analyzed descriptively.

### **Discussion**

#### **Legal Basis for Extradition Requests.**

In general, extradition of an offender who escapes from one country to another can be carried out if there is an extradition agreement between countries, especially between the requesting state and the requested country. A-contrario, if there is no extradition agreement, the state is asked not to have the obligation to hand over the perpetrators of crime to the requesting country. Thus, the extradition agreement is a necessity for both countries (requesting state and requested state) to hand over runaway criminals. For this reason, the two countries must make a bilateral agreement on extradition. Meanwhile, many countries have made bilateral agreements in the interests of extradition even though some other countries prefer to achieve a multilateral agreement, especially countries belonging to a regional group..

The desires of countries in a region such as Latin America and Western Europe are examples of countries that are considered to have succeeded in agreeing on a separate convention on extradition. However, in the environment of international organizations since the League of Nations (LBB) up to the United Nations today has not yet reached an agreement to create a separate international agreement on extradition. That is caused by differences in interests of the UN member states.

Today there is a tendency that although there is no extradition agreement between countries, countries can voluntarily surrender perpetrators of crimes to one another in the broad interests of the international community to fight crime. However, this international legal doctrine has rarely been realized as part of inter-state law. On the other hand, several countries in establishing laws have included certain provisions regarding the voluntary surrender of perpetrators of crimes even without an extradition treaty. One concrete example is Canada. In Canada, extradition in certain situations even in the absence of an extradition treaty

can be given. Likewise with Colombia and Indonesia in the Nazarudin case. The same thing happened in India and Japan, the two countries also did not refuse to hand over the perpetrators of crimes despite not having an extradition agreement. Countries such as Indonesia assume that voluntary surrender can be carried out only on serious crimes.

The legal basis is extradition request:

1. National legislation
2. Bilateral agreements.
3. Expansion of international conventions
4. International manners.
5. Declaration of reciprocity

While the Principles underlying Extradition are :

1. The principle of trust
2. The principle of reciprocity.
3. The principle of double criminality
4. The principle to not surrender its citizens.
5. The principle that a crime which is wholly or partly within its territory falls within the jurisdiction of the requested country, that country may refuse an extradition request.
6. The principle to not surrender political criminals.
7. The principle known as *attentatclausule*
8. The principle of specialty.
9. The principle of *ne bis in idem*.
10. The Principle of Expiration.

### **Crimes that can be extradited**

In general, crimes that can be extradited are included in the extradition agreement. In this extradition agreement the parties agreed that an act is considered as a crime. So in this extradition agreement, a list of crime system is adopted. There are two ways to determine the crimes that can be extradited namely:

1. Enumerative method, namely the determination of crimes carried out by mentioning one by one each crime that allows to be extradited.
2. Eliminative method, namely the determination of crimes carried out by separating based on certain criteria on the basis of punishment to determine the type of crime that can be extradited.

On the other hand, crimes that cannot be extradited are crimes listed in the extradition agreement in the form of political crimes, military crimes, economic and fiscal crimes. Regarding extradition procedures and procedures in practice, the mechanism is regulated in the provisions of the law. A country can be in a position as a requesting state or as a requested state.

In Indonesia Article 1 point 1 of Law No.25 of 2003 Money Laundering is formulated as follows:

“Money Laundering is the act of placing, transferring, paying, spending, granting, donating, depositing, bringing out of the country, exchanging, or other acts of assets that are known to or reasonably suspected to be the result of criminal acts with the intent to conceal, or disguise the origin of assets that it seems to be a legitimate asset ”.

The stage and process of money laundering are:

1. The Placement Phase is placing funds generated from a criminal activity, combining legal and illegal cash. This placement is intended as a step to eliminate the background or origin of the money that has illegal or dirty money to make it appear to be legal.
2. Layering Stage. Layering phase aims to eliminate traces of the origin of the money. This purpose is carried out by making transfers from various accounts to other countries, splitting the amount of funds in the bank, transferring in foreign currency, buying shares etc.
3. The integration phase is the stage of reuniting money that is fragmented into various sectors after going through the first and second stages to then be used in legal activities.

The mode of money laundering crime can be through tax evasion or through illegal means such as narcotics trafficking, illegal gambling, alcohol smuggling, bribery, arms trading, terrorism, etc. The objects and

facilities used by money launderers are Loan Back mode, C-Chase Operations, International trade transactions using L / C document facilities, cash smuggling mode to other countries, acquisition mode etc. Organized Transnational Crime is a criminal act or criminal transaction that crosses national boundaries therefore it violates the laws of more than one country. To be called a transnational crime filled with the following elements:<sup>2</sup>

1. Performed in more than one country.
2. Performed in one country but preparation, planning, direction, or control is carried out in another country.
3. Conducted in a country but involves an organized criminal group that conducts criminal activities in more than one country.
4. Performed in one country but caused substantial effects in other countries.

### Conclusion

1. Determination of the authority to grant or reject extradition requests is known by the three systems, namely the authority of the executive body because it is related to cooperation in enforcing inter-state law, the second is the authority of the judiciary related that the extradition issue is related to human rights that must be protected, the three combined systems namely that the protection of the perpetrators of criminal acts must be balanced with the protection of the public interest, which is the authority of a country. Therefore, extradition is not only a matter of law but also a policy of the government. The legislative and judiciary bodies have decisive authority in extradition matters.
2. The nature of money laundering criminality is related to the background of obtaining illegal amounts of money which are then managed by certain activities such as by forming a business, transferring or converting them to banks or foreign exchange as a step to eliminate the background of illegal funds.

### Suggestion

Tackling transnational crime requires regional and international collaborative efforts. The cooperation is through means of extradition, transfer of the convicted, mutual assistance in criminal investigative issues together, and the transfer of the judicial process. The obstacles that arise can be overcome by strengthening regional cooperation.

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