



The Opportunity to Establish an Extradition Mechanism in the ASEAN

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Abstract

Extradition is transporting a suspect or defendant to the nation where the crime was committed to be prosecuted and punished. Under international law, states are not required to enter into extradition agreements. There are impediments to the implementation of extradition, such as disparities in sovereignty principles and perspectives on offenses; in addition, this impediment exists at the regional ASEAN level, such as terrorism that can be extradited based on the UN Convention, even without an agreement, recognizing its impact on sovereignty. Therefore, the conclusion of an extradition agreement is crucial. Using normative research methodologies and legal perspectives, this study will explore the prospects and challenges in forging extradition agreements at the ASEAN regional level and compare them to the E.U. processes. The study's results indicate that there is still enormous potential for forming an ASEAN extradition treaty, which has made substantial progress with the 2018 provisional draught. Regional barriers and limits comparable to those encountered by ASEAN are anticipated. Therefore, an extradition convention will assist law enforcement and contribute to regional collaboration. With an extradition agreement, perpetrators can be punished by the proper state, and victims or society can be restored to justice.

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INTRODUCTION

As a result of the rapid advancement of technology, international travel is becoming more accessible, and this advancement has positively affected the global development process. On the other hand, it has offered perpetrators an opportunity to flee to other nations and evade the law and its threats. Nuryani, Wardana, & Syhada (2022) added that suppose this occurs, countries' interests will become entangled and involved, and since this violates the sovereignty of the country where the culprit is, the country of origin cannot simply capture a perpetrator who commits a crime and escapes to another country. The government of origin must solicit the aid of the receiving country through an extradition process that requires its permission. Interventions

without the agreement of the nation where the perpetrators are based will be deemed violations of international law (Nuryani et al., 2022).

According to the rules of nature, every person is responsible for the consequences of his or her acts. If the perpetrator's own country is unwilling to take action in response, the international community may need to step in to ensure justice is served. In such a situation, the preparator must be extradited to the country where the crime was committed. According to Grotius' "*out pure aut dedere*" principle, every perpetrator of an international crime must be judged according to the law under which he or she committed the offense. According to Harriman (2018), extradition agreements are the legal underpinning for international cooperation concerning the extradition of perpetrators. The extradition agreements are executed based on the principles of international cooperation and respect for each country's sovereignty. Having an extradition agreement ensures that wrongdoers are punished appropriately and justice is restored for victims and society. However, Tobing (2022) stated that although not mandatory globally, such agreements enhance cooperation between countries and allow national laws to apply internationally.

Due to the rise of legal disparities between countries and territorial sovereignty, extradition agreements have become increasingly complicated. Each country has its jurisdiction based on territorial law, therefore, law enforcement personnel cannot quickly enter the territory of another country to apprehend preparators without the approval of that country. The principle of respect for each country's sovereign sovereignty becomes an obstacle in the extradition process. Angkasari (2014) stated that cross-country cooperation is necessary to overcome this difficulty and ensure that a state punishes perpetrators with jurisdiction over their conduct. Hence, disparities in comprehension and legal systems among nations can obstruct the extradition process. The country receiving the request must confirm that the alleged actions are considered crimes and that the punishment aligns with their laws and recognized norms. That exists in all nations. Kalalo (2016) added that effective extradition necessitates cooperation and communication between nations; thus, these offenses can be processed and punished equitably.

International agreements can be employed to establish the basis for international collaboration to overcome these difficulties. Looking back in history, the earliest documented formal extradition agreement was established in 1279 B.C. when Ramses II of Egypt and Hattusil of Kheta reached a formal accord. According to Nuryani et al. (2022) as cited in their article, the signing of an agreement between nations signifies the beginning of an extradition treaty's development. In the past, extradition accords were initially designed to ensure the extradition of political actors; however, not necessarily common perpetrators. The extradition of political enemies to the state rather than common perpetrators persisted until the late 18th century when the French Revolution instilled the belief that supposes people fought against authoritarian and despotic regimes to uphold and defend liberal values, it would be impossible to return them to their oppressors. The French Revolution and the French official extradition arrangements at that time radiated far beyond the borders of France; the political protection of extraditions grew in neighboring nations and became a worldwide recognized basis of extradition law (Top, 2021). However, as it evolves, there is a suggestion to continue applying it to perpetrators of political crimes, as will be discussed in this text.

Extradition agreements are necessary since countries operate differently; some countries are willing to extradite preparators to the requesting country even suppose

countries such as South Africa and Indonesia do not have an extradition agreement. On the other side, the Netherlands, Turkey, and numerous other nations desire to extradite the preparators only when the extradition pact has been implemented. Each country enters into bilateral and multilateral extradition agreements to ensure legal certainty and parity of opinion regarding the diverse practices of these countries. Extradition treaties are typically negotiated between neighboring nations since preparators are more likely to flee to these countries. In the context of ASEAN, extradition treaties play a pivotal role in facilitating cooperation and addressing transnational crime concerns across member states. Harriman (2018) stated that as these treaties are typically negotiated between neighboring nations due to the likelihood of perpetrators seeking refuge in nearby countries, they provide the necessary legal framework for managing extradition matters effectively. This aligns with ASEAN's aim to enhance regional security and collaboration in addressing shared challenges, including transnational crime.

ASEAN is aware that transnational crime is an urgent issue that must be dealt with decisively by every nation, as it significantly impacts national security. Cooperation enables ASEAN to make headway in combating transnational crime. Since its inception, ASEAN's primary objective has been to provide security for its member states, albeit non-militarily. The primary purpose of the ASEAN initiative is to uphold and preserve peace and neutrality in Southeast Asia. There's a perception that ASEAN serves as a refugee for terrorism networks, primarily due to its majority Muslim population, which raises concern about the potential presence of terrorist networks still connected to groups like Al-Qaeda (Fajriah & Latifah, 2018). ASEAN has become a base for at least three terrorist groups: Abu Sayyaf, The Moro Islamic Liberation Front (MILF), and Jemaah Islamiyah. Fajriah & Latifah (2018) added, that these groups have disrupted the security and stability of the ASEAN region, consequently affecting both regional security and national defense.

Terrorism can be extradited as a form of crime, originating from the UN General Assembly Resolution 52/164 on The International Convention for The Suppression of Terrorist Bombings in 1997, as noted by Putri (2012). The convention allows extradition for terrorism in contracting states, which commit to considering it an extraditable offense in any subsequent extradition agreements. Even without an existing agreement, if a contracting state agrees to extradite under this condition, the convention can serve as a legal basis. Terrorism poses a threat through organized violence for political goals, often tied to extremism. Such actions disrupt sovereignty, recognized by Lukman (2021) as more than just a crime. This depends on each nation's sovereignty and agreements between them.

One instance is the apprehension of Minhati Madrais, the wife of terrorist Omar Maute, in a raid conducted by the Philippine police and military at her residence in Tubod, Iligan City, Philippines, on November 5, 2017. This operation resulted in the death of Omar Maute himself (Hasugian, 2017). Although this case involved only two countries, the potential for such threats to escalate at a regional level, as mentioned above, is evident. Therefore, regional cooperation within ASEAN through mechanisms outlined in extradition agreements is highly essential to address these challenges effectively.

As previously described, regarding extradition with ASEAN and as a form of state defense. The author will address the extradition agreement now being negotiated in the ASEAN region by examining the current comparator, specifically the extradition treaty of

the European Union. With this information, the authors may determine the potential for an extradition pact in the ASEAN region.

METHODS

This research employed normative/legal research methods and combined statutory and case-based approaches (Marzuki, 2005). This study aimed to describe the condition or symptoms of the thing under investigation without attempting to draw universally accepted conclusions. By restricting concerns and behaviors, Soekanto & Mamudji (2012) states that descriptive research seeks to collect information about individuals, events, or other symptoms as precisely as possible.

The data for this research was gathered from legal sources and then presented in the form of a narrative text. This narrative text aimed to provide a coherent, logical, and rational depiction of the subject matter. It was structured in an organized manner, weaving together pertinent norms, rules, theories, and legal doctrines that pertain to the fundamental issues under investigation (Soekanto & Mamudji, 2012). To analyze the data, a qualitative normative analysis approach was employed. This approach delved into legislative regulations that are supportive of the research objectives. Additionally, a qualitative methodology was adopted to examine secondary legal materials, as discussed by Marzuki (2005). This comprehensive method allowed for a deeper exploration of the research subject, focusing on the legal landscape and its implications.

RESULT AND DISCUSSION

Extradition Under International Law

Extradition is the formal transfer of preparators from one country to the country where the alleged crime occurred. This is conducted for judicial proceedings or to carry out a prison term. Since no international law requires a government to hand over fugitives, the arrangement depends on bilateral agreements (Warbrick, Mcgoldrick, Mackarel, & Nash, 1997). According to Oppenheim and J G. Starke in Fauzin (2021), extradition is the transfer of a perpetrator to another country at the request of the country in which the perpetrator has committed a crime. Christianto (2020) stated that this occurs when someone is suspected or accused of violating the laws of the requesting nation. This extradition is a consequence of the right to asylum, which has political aims and helps the pursuit of power. Today, extradition permits access to the territories of other nations, allowing national criminal laws to be implemented for perpetrators who have fled to other nations. This is conducted, thus, judicial verdicts can be rendered against perpetrators who flee abroad (Fauzin, 2021). This extradition process plays a crucial role in ensuring that individuals who have committed crimes cannot evade justice simply by crossing borders. It fosters international collaboration in upholding the rule of law and addresses the need for cooperation in tackling transnational crimes effectively.

The practice of extradition, in which a perpetrator fleeing to another nation is apprehended and returned, occurs periodically, utilizing the exact mechanism throughout the world. Later, this grew into customary international law and created the rules set by international agreements, whether bilateral, multilateral, or regional, and applied as the laws of each country (Sipalsuta, 2017). Under the fundamental principles of international law, the state possesses supreme authority over all individuals and objects inside its territory. Therefore, a country cannot interfere with the sovereignty of other nations on its territory without the permission of other nations. Sipasulta (2017) added that considering that this constitutes an intrusion into the internal affairs of other

nations, which is prohibited by international law, such an arrangement is referred to as an extradition agreement. The United Nations General Assembly approved Resolution 45/117 on the Model Extradition Treaty on December 14, 1990. Although this is merely a model law and not an actual law, it can be utilized as a reference in extradition agreements. This resolution was issued due to the global community's concern over the organized crime threat (Sumual, 2019). As a pivotal instrument, it exemplifies international collaboration aimed at harmonizing legal approaches to combat transnational criminal activities and reinforces the imperative of cross-border cooperation in maintaining global security and justice.

In addition to extradition agreements, two international law conventions play a crucial role in promoting extradition as a basis for cooperation in preventing and overcoming crime. These two conventions are the 2000 Italy-signed UN Convention on International Organized Crime and the 2003 Mexico-signed UN Convention on Corruption (Dewi, Sepud, & Utama, 2020). These two treaties are crucial to the evolution of extradition since they are powerful legal instruments, as evidenced by the fact that numerous countries have ratified them. The two agreements highlight that each country can only request extradition based on an existing agreement with another nation and only suppose that the nation complies with the terms of the agreement. Article 16 of the UNTOC Convention and Article 44 of the UNCAC Convention contain this extradition agreement.

Parthiana (2004) added that international law has acknowledged the following principles in international accords:

1. The double crime concept states that a crime that can be extradited must be a crime under the laws of both the extraditing country and the requested country. Since each country's legal system is unique, the name or ingredient of the crime need not be identical in both nations; it is sufficient to suppose both countries categorize the act as criminal.
2. The concept of specialization states that the requesting country may only prosecute and punish extradited individuals for the offense indicated in the extradition request. Therefore, the individual cannot be prosecuted or punished for a crime other than the one he was extradited for.
3. The principle of *ne bis in idem* or *non-bis in idem* states that suppose the individual wanted for extradition has already been tried and convicted of the crime for which the seeking country is requesting extradition, the requested country must deny the request.
4. The notion of not handing over political prisoners (non-extradition of political perpetrators). Suppose the desired country treats the act, which is the reason for the extradition request, as a political crime, then that country must refuse the request. The definitions and criteria utilized to designate acts as political crimes have yet to be universally acknowledged by experts and national governments.
5. The idea of national non-extradition. Suppose the individual sought for extradition is a citizen of the requesting nation, the requesting country can reject the request. The basis of this notion is that the state must protect its citizens and vice versa; citizens are entitled to protection from their state.
6. The concept of expiration states that an extradition request must be denied if, according to the laws of one or both nations, the deadline for filing charges or carrying out a penalty for the offense underlying the extradition request has passed.

Furthermore, as mentioned above, regarding the development of the principle of extradition that cannot be applied to political crimes, there is a proposal suggesting that

this should be considered based on the nature of the political crime itself. Quoting Riyanto (2016) opinion in his writing, he believes that political crimes can be subject to extradition as long as their essence and nature undergo modifications, making them exceptional crimes that are considered *Hostis Humani Generis*. Exceptional crimes in this context refer to separatist movements engaged in acts of terrorism. Terrorism is not an ordinary crime, as it has the potential to threaten the security, and well-being of societies, nations, and states, as well as global peace (Nainggolan, Senewe, & Lengkong, 2022). Therefore, it becomes possible to extradite political crimes as long as they fall under the category of exceptional crimes that are considered *Hostis Humani Generis* (enemy of humanity), and how each country interprets such movements.

As for ensuring uniformity in interpretations across different countries, extradition agreements are of utmost importance. This is due to the varying attitudes towards extradition within the international community itself. Aside from establishing a common understanding, extradition agreements are crucial because there are differences in the mechanisms of conducting extraditions, as discussed above. Even though, the existence of an extradition treaty is not necessarily a determining factor in how states hand over preparators. Even in the absence of an agreement, nations can exchange preparators. Excellent and close ties between nations can facilitate and expedite the process of handing over perpetrators, whilst poor ties will present substantial obstacles. Sumual (2019) stated that this scenario is founded on political issues and ties between countries and not on an awareness that the perpetrators of crimes must be tried and punished. In essence, it underscores the intricate balance that nations must strike between safeguarding their sovereignty, maintaining international relationships, and upholding justice on a global scale. As a result, extradition agreements serve as not only legal frameworks but also as instruments of diplomacy, providing a structured avenue for navigating the complexities of cross-border law enforcement and cooperation.

The next is one of the forms of crimes that can be extradited, which is terrorism. This originates from United Nations General Assembly Resolution 52/164 on The International Convention for The Suppression of Terrorist Bombings in 1997 as stated by Putri (2012). The convention states that terrorism constitutes crimes that can be extradited in any contracting state, and the contracting states undertake to include these crimes as extraditable offenses in any extradition agreements subsequently concluded between them. Furthermore, if a contracting state agrees to extradite on the condition that there must be an extradition agreement in place, but there is no such agreement with the requesting state of extradition, then this convention may serve as a legal basis for extradition.

Terrorism is considered a threat as it involves the systematic and organized use of physical violence against targets to achieve a political goal. These actions are often linked to extremism and radicalism. Terrorist groups employ extreme and radical means to accomplish their objectives when engaging with opponents or enemies. Lukman (2021) stated that terrorism has long been recognized as more than just a crime but a disruption to a nation's sovereignty. However, as established, it ultimately depends on the sovereignty of each nation and the agreements made between them. In the context of extradition, the complexity arises from the delicate balance between addressing heinous crimes that transcend borders and respecting the autonomy of individual states.

Extradition Practices in the International Community, especially the European Union

Furthermore, as an illustration of the practice of extradition treaties, the extradition treaty within the European Union serves as a notable example. This treaty showcases the cooperative efforts among member states to establish a framework for extradition that promotes mutual legal assistance and effective cross-border law enforcement. The Extradition Agreement is the 1957 European Convention on Extradition (Top, 2021) and at that time, the 1957 extradition pact marked the beginning of the European Union's robust action against extradition.

With that goal in mind, the Dublin Accord was established, in which all European Commission countries began to implement strict reciprocity relationships. Moreover, in June 1980, a convention called Espace was drafted, similarly dedicated primarily to extradition. Never having come into effect of the convention, it is a type of failure of the European Commission to establish legal assistance other than extradition. The brilliant vision of an Espace judiciaire européen, which only incurred disdain in the Dublin Agreement, seems to have died quietly. In other words, the initiatives undertaken by the Member States during that period to establish an independent platform for legal assistance saw a remarkable failure (Vermeulen, 2006). This suggests that the attempts to create a self-governing forum dedicated to providing legal aid were not successful.

In 1990, in response to an inquiry regarding the standardization of extradition regulations, the European Commission stated that it did not have any intentions to establish cohesive legislation in this domain. The EU convention was quickly composed, reflecting the urgency and efficiency with which it was developed. This led to the creation of a streamlined convention specifically focused on extradition, which was officially completed and approved by March 1995 (Warbrick et al., 1997). This efficient process indicates the dedication and concerted efforts of the involved parties in establishing a comprehensive framework for extradition within the European Union.

The Convention on Extradition, which was streamlined in 1995, is a supplement to the treaty in 1975. The 1995 Convention was intended to streamline extradition by establishing a flexible legal framework among EU members to eliminate the delays caused by the current system. Parties to the agreement agree to apply simple measures governing the surrender of preparators suppose the prerequisites of the convention are met. The expedited procedure commences after receiving a provisional arrest request (Warbrick et al., 1997). Alternatively, in cases where the Schengen Agreement is relevant, the process is triggered when an individual's presence is flagged in the Schengen Information System.

In addition, in September 1996, a convention on extradition between member states was enacted. The purpose of the 1996 convention is to add conditions to the 1995 convention. The 1995 convention significantly modified the standard extradition process. The modifications are as follows (Warbrick et al., 1997):

1. Adjustments to extraditable offenses when the 1957 treaty permits extradition to be granted concerning crimes punishable by at least one year of imprisonment under the legislation of the requesting or requested country. However, in the 1996 convention, the restriction was decreased by the formulation that extradited is a crime punishable by imprisonment of at least one year under the legislation of the requesting nation and at least six months in the requested country.
2. This case concerns the applicability of double criminality standards between the common law and civil law systems. According to Article 3, extradition shall apply to

offenses that the requesting state believes to be crimes of "conspiracy or association to commit a crime".

3. The 1996 Convention gives member nations two possibilities. Article 5, paragraph 1 stipulates that "no crime shall be treated by the requesting Member State as a political crime, as a perpetrator connection with a political crime or a crime with a political motive". Article 5 paragraph 2 states that the Member States may attach reservations to Article 5 paragraph 2 declaring that only offenses, including conspiracy or association to commit offenses, are referred to in Articles 1 and 2 of the European Convention on Combating Terrorism.
4. Regarding Fiscal Violations, Article 6 specifies that extradition might be authorized for fiscal offenses. However, Article 6 Paragraph 3 empowers each Member State to declare that it will grant extradition in respect of a fiscal offense only suppose it relates to "an act or omission that could constitute an infringement in respect of excise, value added tax or customs duties". This is under the strategy taken by the Schengen Convention.
5. The position of member nations concerning the extradition of their nationals is established in Article 7. Extradition cannot be refused since the defendant is a citizen, as referred to in Article 6 of the 1957 Convention. However, Article 7, paragraph 2 permits each Member State to announce that it will not approve the extradition of its nationals.
6. The principle of specificity has been revised in Article 10. Provided that the crime cannot be punished by deprivation of liberty, the requesting state is entitled to prosecute the perpetrator for offenses other than those on which the extradition request is based. Article 10's approach is substantially distinct from that of the 1957 Convention. Article 14, paragraph 1, letter an of the 1957 Convention allows the requested state to waive specific restrictions. This development signifies a shift in a person's status in the extradition process.
7. Article 16, paragraph 2, of the 1995 Convention and Article 18, paragraph 3, of the 1996 Convention stipulate that the conventions will enter into force ninety days after the last member state notifies the Council of their ratification. Before the convention enters into force, any Member State may declare that the Treaty "applies to its relations with those Member States that have made the same statement." Such a mechanism by convention makes a "rolling ratification" and should mean that they become operational, albeit on a limited scale, sooner rather than later.

In 1999, the Council of the European Union, with the assistance of the British delegation, made steps to enhance the efficacy and efficiency of preventing and eliminating transnational and international crimes. The meeting in Amsterdam was followed by a meeting in Finland in 2002, which produced the convention on the Arrest and Surrender of Perpetrators, which has been in effect since 2004. At the summit in Finland, it was highlighted that EU member states committed to constructing an independent, safe European Union zone, and Justice. According to Atmasasmita (2011), this notion is reached when members have the principle of equal recognition of every court ruling according to each country's legal and current systems. This exemplifies how international cooperation, particularly within regional contexts, seeks to create unified strategies and frameworks for tackling complex challenges that transcend national borders.

Furthermore, under the convention, there is a term in the European Union called arrest warrant. An arrest warrant is a mechanism for handing over a person designed to simplify and speed up the process. The absence of political interference ensures that EU

member states cannot refuse the extradition of their citizens who have committed transnational crimes solely based on their nationality (Atmasasmita, 2011). This underscores the principle of non-discrimination in extradition proceedings, where decisions are made based on the merits of the case rather than the individual's citizenship. This approach promotes cooperation and a consistent application of justice across borders.

An arrest warrant exists concerning the production of the convention on the Arrest and Surrender of the perpetrators of the described crimes. The aim is to replace lengthy extradition processes with new and efficient means of bringing back suspected perpetrators who have fled abroad and persons convicted of serious crimes who have fled from the country, to transfer them forcibly from a member state to another country for criminal prosecution or the execution of a sentence of detention or detention order. European arrest warrants permit such individuals to be returned within a fair amount of time for their trial to conclude or to be imprisoned to serve their sentence (United Nations Office on Drugs and Crime, 2008). This streamlined approach not only expedites the administration of justice but also contributes to a more coordinated and united effort in combatting cross-border criminal activities within the European Union.

In addition to the extradition agreements illustrated above, other regional extradition agreements are outside the European Union. This instrument was adopted by the Council of the Arab States League in 1952 for these accords, such as the Extradition Agreement of the Arab States League. The Inter-American Extradition Convention, which entered into force in 1992, is the culmination of inter-American extradition accords dating back to 1879. Upon adoption by the General Assembly of the Organization of American States and the Economic Community of West African States Convention on Extradition 1944, the Convention is open to admission by any American State and Permanent Observer to the Organization of American States (United Nations Office on Drugs and Crime, 2008). These regional extradition frameworks emphasize the commitment of various groups of nations to collaborate in addressing transnational crime, reinforcing the importance of collective efforts in maintaining global security and justice.

Current Extradition Practices in the ASEAN Region

Numerous nations have negotiated and signed bilateral extradition agreements. The primary advantage of bilateral agreements is that they may be modified to satisfy the individual requirements of the signatories. Consequently, these accords are sometimes much more thorough and exact than comparable multilateral accords and are easier to modify. However, negotiating bilateral extradition accords can be challenging, and States desiring to establish a sufficiently comprehensive network of such agreements will typically be required to sign many (Organisation for Economic Co-operation and Development, n.d.). This extensive effort reflects the dedication of countries to ensure that perpetrators of crimes cannot escape justice by exploiting jurisdictional differences or seeking refuge in other territories.

As stated previously, several ASEAN nations have negotiated and signed bilateral extradition agreements with several nations. Indonesia and the Philippines, for instance, have a long-standing bilateral extradition agreement. The agreement covers the extradition of those who are in the midst of legal proceedings or have been prosecuted and found guilty or convicted of a variety of crimes, including those pertinent to trafficking, rape, indecent assault, unlawful sexual acts with or against minors, kidnapping, illegal or arbitrary detention, slavery, forgery, and perjury. The agreement

specifies the extradition parameters, including required and discretionary grounds for denial and the mechanism for submitting extradition requests (Extradition Treaty between the Republic of the Philippines and the Republic of Indonesia, 2005). These bilateral agreements signify the willingness of nations to collaborate in upholding justice, preventing cross-border criminal activities, and ensuring that perpetrators of serious crimes cannot escape accountability by seeking refuge in other jurisdictions.

Excluding Indonesia and the Philippines, Malaysia is only one of the Southeast Asian nations that practiced extradition. The Extradition Act of 1992 Malaysia provides the legal framework for extradition to and from the country. Extradition may be carried out under an extradition agreement (including multilateral accords) or a Special Order from the minister responsible for fugitive perpetrators. Suppose a state without an agreement with Malaysia makes an extradition or temporary detention request. The relevant minister may suppose necessary, provide Special Instructions to carry out the request under the Malaysia Extradition Act (Extradition Act No. 479, 2006). This legal provision underscores Malaysia's commitment to international cooperation in combating cross-border crime by allowing the extradition of individuals who have committed serious offenses and fled to its jurisdiction, thereby contributing to the maintenance of regional and global security.

Malaysia's extradition law includes provisions for "simplified extradition" concerning Singapore and Brunei, two neighboring nations. According to the Act, suppose the judicial authorities in Brunei or Singapore have issued an arrest warrant for a person suspected of breaking the law or who has been convicted, and the person is believed to be in Malaysia, a judge in Malaysia may uphold the warrant and execute it as suppose it was issued under the Malaysian Criminal Process Code (Extradition Act No. 479, 2006). This mechanism streamlines the extradition process and strengthens cooperation among these neighboring countries in the pursuit of justice and the prevention of cross-border crime.

As an example from the ASEAN region, Singapore has an Extradition Act that provides a legal basis for extradition to and from Singapore. The Singapore Extradition Act stipulates the conditions under which Singapore may extradite suspects to Commonwealth nations and countries with which Singapore has legitimate extradition agreements (Singapore Extradition Act). The Singapore Extradition Act contains mechanisms for judges to validate Malaysian arrest orders. The existence of "simplified extradition" provisions in the domestic laws of Brunei, Malaysia, and Singapore shows a global trend toward such provisions (The Association of Southeast Asian Nations, 2010). This trend highlights the shared commitment of nations to facilitate efficient cross-border collaboration in apprehending and prosecuting suspects involved in criminal activities across jurisdictions.

There are mutual legal aid agreements at the ASEAN regional level. The agreement was issued in November 2004 under the term ASEAN Mutual Legal Assistance Treaty (AMLAT). According to Devitasari (2015), AMLAT set the way for ASEAN member collaboration in mutual legal aid. Disparities hinder the implementation of AMLAT in criminal law systems and the usage of different jurisdictions across ASEAN nations. Some nations, such as Indonesia, adhere to a continental legal system, while others, such as Malaysia and Singapore, employ an Anglo-Saxon system. The primary distinction is the judicial model, which stresses suspects' human rights or the efficiency and efficacy of the judiciary. Countries frequently require using their respective legal systems to prosecute crimes, resulting in sluggish and cumbersome prosecutions. Devitasari (2015) added, that Singapore has standards for countries desiring to request help;

consequently, many countries need help with applying for aid from Singapore due to the necessity to simplify submission processes. In retrospect, no similar device exists for dealing with extradition. The prospect of forming such agreements in the future is under consideration, The Association of Southeast Asian Nations (2010) further emphasizes the ongoing efforts of ASEAN member states to strengthen regional cooperation in addressing transnational crime challenges.

However, one of the difficulties in implementing extradition arises from the obstruction posed by certain international legal instruments, such as human rights and differing opinions regarding the classification of crimes. For instance, consider the activities of the Free Papua Movement (*Operasi Papua Merdeka* or OPM). There are both proponents and opponents in handling the movement, particularly concerning the arrest and suppression of its members (CNN Indonesia, 2021). Often, when the movement is under pressure, its members flee to neighboring countries, such as Papua New Guinea. In the context of Indonesia's history with Papua New Guinea, both countries have an extradition agreement, which was ratified by Indonesia through Law Number 6 of 2015 concerning the Ratification of the Extradition Treaty Between the Republic of Indonesia and the Independent State of Papua New Guinea (Law of the Republic of Indonesia Number 6 of 2015 Concerning Ratification of the Extradition Agreement between the Republic of Indonesia and Papua New Guinea). Despite this, the complexities arising from political sensitivities and human rights concerns may complicate the actual implementation of extradition requests, underscoring the multifaceted challenges faced by ASEAN member states in their efforts to combat transnational crime effectively.

This extradition treaty aims to facilitate the process of returning individuals who have committed crimes or are suspects of criminal activities in one country and sought in another, ensuring that justice can be served despite the complexities that can arise from the application of international human rights principles and differing perspectives on crime qualifications. Based on the information provided, it appears that the Free Papua Movement (OPM) is associated with the crime of sedition or "*makar*" in Indonesian law, this is due to the actions that are perceived as threats to the legal interests of the security and safety of the Unitary State of the Republic of Indonesia (NKRI). The crime of sedition encompasses three forms as stated in Chapter I of Book II of the Indonesian Criminal Code (KUHP or *Kitab Undang-Undang Hukum Pidana*), sedition aimed at undermining the legal interests of the security of the head of state or its representatives. Sedition aimed at undermining the legal interests of the territorial integrity of the state. Sedition is aimed at undermining the legal interests of the government of the state (Mulia, Afrizal, & Putera, 2020).

Furthermore, Title I of Book II of the Indonesian Criminal Code addresses crimes against state security, which includes the crime of treason. Treason can be of two types, internal and external treason. Internal treason aimed at altering the state's constitutional structure or existing government, including crimes against the head of state, thus affecting the state's internal security. External treason is aimed at endangering the state's security against attacks from foreign countries, thus affecting the state's external security, for example, assisting foreign states hostile to Indonesia. It is mentioned that the provisions in Chapter I of Book II of the Indonesian Criminal Code concerning crimes against state security have a political aspect to them. These provisions include Article 104 of the KUHP, which regulates treason to kill or seize the freedom of the President or Vice President to be unable to govern. Article 106 of the KUHP, addresses treason to surrender national territory to the enemy or to secede from the state's territory. Article 107 of the KUHP, deals with attempts to overthrow a

legitimate government. Article 108 of the KUHP, addresses armed rebellion against the state government. These actions are closely related to political activities, and Article 110 of the KUHP deals with conspiracy or agreement to commit such crimes. It's important to note that the legal definitions and interpretations of these crimes can vary, and different perspectives may exist regarding the actions of the Free Papua Movement and how they fit within the legal framework (Mulia et al., 2020). Notably, the legal definitions and interpretations of these crimes can vary, and different perspectives may exist regarding the actions of the Free Papua Movement and how they fit within the legal framework.

Based on the provisions mentioned above, when the Free Papua Movement (OPM) flees to another country, it will encounter the principle of non-extradition of political criminals. Such crimes cannot be extradited according to the principle of non-extradition of political crime, which states that someone who commits a political crime or has political motives should not be extradited. Almost all countries refuse to extradite someone accused of committing a political crime. The first country to adopt this principle in its law was Belgium in 1823, which later agreed with France in 1824. This principle was then universally embraced by other countries in the 19th century, such as the Netherlands, Switzerland, the United Kingdom, and others. Countries emphasize the right to protect political refugees. Furthermore, Angkasari (2014) added that it is not easy to define political crimes, even though there is evidence that a perpetrator who flees to another country should be punished for their political activities rather than the crimes themselves. Several criteria have been established for identifying political crimes, encompassing factors like the motive behind the offense, the circumstances surrounding its occurrence, and specific crime types (like treason, incitement, and espionage). Additionally, these criteria encompass situations where the act is directed against a political organization of the requesting state, and where two opposing parties within the country where the crime happened are advocating political agendas.

Opportunities and Obstacles Establishment of a Regional Mechanism on Extradition in ASEAN

Since the Declaration of ASEAN Concord or Bali Concord I in 1976, the Association of Southeast Asian Nations (ASEAN) has planned to establish an extradition agreement in the Southeast Asian region. This concept is part of an initiative to enhance collaboration in the fight against transnational crime. This concept continues to be discussed in a variety of gatherings. As stated by Prasetyo (2007), even at the 4th ASEAN Ministerial Meeting on Transnational Crime, held in Bangkok on January 8, 2004, ASEAN reaffirmed its commitment to improving legal cooperation, particularly in extradition matters. The meeting outcome determined that the ASEAN extradition agreement must adhere to globally recognized extradition principles and extradition law standards, which are a type of human rights respect.

The Working Group on Extradition Treaty, established at the eleventh ASEAN Senior Law Officials Meeting (ASLOM) summit in Siem Reap, Cambodia, in January 2007, conducted another meeting in Bali in June 2007. The conclusions of the meeting will be shared at the Community Security Coordination Conference. ASEAN Political-Security Community (ASCCO) will encourage the implementation of the ASEAN extradition treaty to combat transnational crime in the area (Prasetyo, 2007). The ASEAN member states cannot achieve this independently, however, measures must be taken to ensure their agreement. The ASEAN extradition agreement must be capable of compiling, translating, and resolving disputes between the legal systems of ASEAN member states.

Despite this, implementing extradition agreements in the ASEAN region still needs to overcome several hurdles, including disparities in national government policy. Some countries, such as Singapore, are still reluctant to sign extradition accords since it means that fugitives who have fled to their territory can be returned and convicted for committing crimes in their home country. Consequently, the Indonesian government would continue to advocate for developing extradition treaty instruments in the ASEAN region. Indonesia argues that increased transnational crime in Southeast Asia necessitates enhanced legal cooperation among ASEAN member states, including extradition. The ASEAN extradition pact will aid law enforcement efforts in each ASEAN member state. According to Mathovani (2022), this necessitates the collaboration and commitment of all countries to collectively combat transnational crime. Each nation should take responsibility for implementing this through bilateral and multilateral cooperation efforts.

The above scenario contrasts significantly with the politics in the European Union. As indicated in the above description, ASEAN still relies on consensus-based decision-making, a principle embedded in the ASEAN Charter. Sefriani (2014) added that decision-making by consensus entails that choices are made collectively and agreed upon by all members. This differs from the European Union, which operates as a supranational entity where each country delegates its national power representation to the institution (Puspasari, 2020). Consequently, decision-making within the EU tends to be more streamlined compared to the current practices employed by ASEAN.

This approach is often what causes delays in reaching decisions. However, in the context of the development of extradition agreements, in January 2018 at a meeting of the bloc's senior foreign ministers, all ASEAN nations ratified a model extradition cooperation agreement in response to the bloc's growing challenges. The creation of extradition agreements between ASEAN nations is the primary objective of Indonesian foreign policy, especially in the fight against transnational crimes like drug trafficking, terrorism, human trafficking, illegal fishing, and money laundering in Southeast Asia. In addition, this agreement might serve as a conduit to strengthen legal cooperation among ASEAN member states. According to Suastha (2018), this is a step in the right direction for ASEAN's future, Indonesia remains committed to pushing for the creation of binding extradition instruments within ASEAN. It encourages fellow ASEAN nations to promptly finalize negotiations on the model agreement and proceed with drafting the necessary legally binding instruments.

Regarding the model of the ASEAN Agreement on Extradition that was accepted at the 10th ASEAN Law Ministers' Meeting (ALAWMM), there are around 26 Articles comprising extradition obligations, extraditable offenses, extradition grounds, mandatory and discretionary refusal grounds, and several more (Endorsed Model ASEAN Extradition Treaty by the 10th ALAWMM). Concerning the impediments to forming an Extradition Agreement, they are comparable to those in criminal issues posed by the Mutual Legal Assistance Treaty (AMLAT). According to Damos Dumoli Agusman, as cited by Suastha (2018), Director General of Law and International Treaties at the Ministry of Foreign Affairs of the Republic of Indonesia (2015), the agreement is still bound by differences in the legal systems of each ASEAN member state.

According to Damos Dumoli, the prospect of forging an extradition agreement is still wide open, as evidenced by the fact that countries continue to align their interests to produce a model extradition agreement that all ASEAN members may embrace, regarding Southeast Asia (Bureau of Public Relations Law and Cooperation of the Ministry of Law and Human Rights, 2021). The Indonesian delegation at the 1st ASEAN

Senior Law Official Meeting Working Group on the ASEAN Extradition Treaty (The 1st ASLOM WG on AET), which was held virtually, pushed for further development of the ASEAN Extradition Treaty Model, which was ratified in 2018 by the Ministerial Meeting The 10th ASEAN Law on Laos. This ASEAN Extradition Agreement will, therefore, greatly help the creation of more effective regional cooperation, build regional capability in fighting crime in Southeast Asia, and facilitate law enforcement actions in the area to prevent impunity for perpetrators (Bureau of Public Relations Law and Cooperation of the Ministry of Law and Human Rights, 2021).

Ultimately, concerning the ASEAN 2025 vision's mention of the opportunity for extradition, which is ASEAN will improve its capacity to effectively and promptly address non-traditional security problems, ASEAN strengthens collaboration in addressing and combating transnational crime by continuing ALAWMM's duties to promote cooperation on extradition concerns (Ministry of Foreign Affairs of the Republic of Indonesia, 2015).

CONCLUSIONS, RECOMMENDATIONS, AND LIMITATIONS

An extradition treaty is a formal mechanism that transfers a perpetrator to the country where the crime was committed for trial and punishment. No general norm in international law requires a state to sign an extradition treaty on a treaty or a reciprocal basis. Various barriers to implementing extradition accords, including that each sovereign state has criminal jurisdiction under territorial law, either full territorial sovereignty or territorial sovereignty, and different opinions on what constitutes a crime. As a result, governments frequently enter into bilateral and multilateral extradition treaties to overcome these disputes and establish legal clarity. Extradition treaties are typically negotiated with neighboring nations because they have the potential to become safe havens for perpetrators.

As a precedent for the development of extradition agreements, the European Union's extradition agreement can serve as a model for extradition accords in other regions. From the initial process to the numerous modifications in the European Union's extradition treaty, it can become a specific concern and model for other countries that seek to make regional extradition accords jointly.

Its relationship to the ASEAN region, even though ASEAN still faces challenges in drafting and ratifying its extradition pact. However, ASEAN has made substantial progress in drafting its extradition pact with the 2018 agreement of an introductory text. The barriers and limits encountered by ASEAN are typical at the regional level; therefore, ASEAN's opportunities for adopting an ASEAN extradition agreement remain vastly open. The presence of an Extradition Agreement at the regional level of ASEAN will significantly contribute to the development of more effective regional cooperation and increase regional capabilities for combating transnational crimes in Southeast Asia. In addition, it will facilitate law enforcement actions in the region and prevent circumstances in which perpetrators go unpunished.

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