JURNAL KOMUNIKASI HUKUM

Volume 7 Nomor 2, Agustus 2021
P-ISSN: 2356-4164, E-ISSN: 2407-4276
Open Access at : https://ejournal.undiksha.ac.id/index.php/jkh
Program Studi Ilmu Hukum
Fakultas Hukum dan Ilmu Sosial
Universitas Pendidikan Ganesha Singaraja

Practices and Mechanisms of Cross-Country Arrests Against Criminals

Anak Agung Gde Pradantya Adi Wibawa[1]

[1]Fakultas Hukum, Universitas Udayana
E-mail : tataagung329@gmail.com

Info Artikel

Masuk: 1 Juni 2021
Diterima: 12 Juli 2021
Terbit: 1 Agustus 2021

Keywords:
Practices, Mechanisms, Cross-Country Arrests

Kata kunci:
Praktik, Mekanisme, Penangkapan Lintas Negara

Corresponding Author:
Anak Agung Gde Pradantya Adi Wibawa,*Email:tataagung329@gmail.com*

Abstract

The procedure of law enforcement against international crime includes the problem of developing bilateral and multilateral cooperation in preventing and combating international criminal acts. For example, by entering into an extradition agreement or by entering into a Mutual Legal Assistance (MLA) agreement. Both have different understandings where extradition can be interpreted as a formal surrender made either on the basis of a pre-existing extradition treaty or based on the principle of reciprocity or good relations, for someone accused of a crime (suspect, accused, accused) or someone who have been sentenced to criminal penalties that have definite binding powers (convicted and convicted), whereas Mutual Legal Assistance are agreements between two foreign countries for information purposes and information exchange in an effort to enforce criminal law. Very interesting from this research will be discussed later about the Practice of Cross-border Arrest in the International World, and the Practice of Cross-border Arrest in its Relationship with Indonesia using the Descriptive Normative research method, with legislation and historical approaches.

Abstrak

Prosedur penegakan hukum terhadap kejahatan internasional meliputi masalah pengembangan kerjasama bilateral dan multilateral dalam pencegahan dan pemberantasan tindak pidana internasional. Misalnya dengan mengadakan perjanjian ekstradisi atau dengan mengadakan perjanjian Mutual Legal Assistance (MLA). Keduanya memiliki pengertian yang berbeda dimana ekstradisi dapat diartikan sebagai penyerahan formal yang dilakukan baik berdasarkan perjanjian ekstradisi yang telah ada sebelumnya maupun berdasarkan asas timbal balik atau hubungan baik, bagi seseorang yang dituduh melakukan suatu tindak pidana (tersangka, terdakwa, terdakwa) atau seseorang yang telah dipidana dengan pidana yang mempunyai kekuatan mengikat

yang pasti (dihukum dan dipidana), sedangkan Mutual Legal Assistance adalah perjanjian antara dua negara asing untuk keperluan informasi dan pertukaran informasi dalam upaya penegakan hukum pidana. Sangat menarik dari penelitian ini nantinya akan dibahas tentang Praktik Penangkapan Lintas Batas di Dunia Internasional, dan Praktik Penangkapan Lintas Batas dalam Hubungannya dengan Indonesia dengan menggunakan metode penelitian Deskriptif Normatif, dengan pendekatan perundang-undangan dan sejarah.

I. Background

Extradition according to Indonesian Statute No. 1 of 1979 is a process of transfer (handover) by a requesting country, the transfer (handover) is presumed or convicted for someone who commits a crime outside the territory of the requesting country and within the jurisdiction of the state of the requesting country, the transfer process is done because of the authority wants the perpetrators to adjudicated and punish. Extradition was carried out on the basis of a "treaty" (treaty) between the Republic of Indonesia and other countries whose ratification was carried out by law. If there is no agreement, extradition can be carried out on the basis of good relations and if the interests of the Republic of Indonesia want it (Article 2 Sub 1 and 2).

The period before the 1980s, the world was almost almost immersed in warfare by using sophisticated weapons (sophisticated weapons), especially gun battles by both world giants in the field of weaponry between the United States and the Soviets, which the two countries called "The Super Power" . Since the end of the cold war era or post-cold war the world has no longer fought against weapons, especially after the collapse of The Super Power from the East, Soviet, the world has fought against economic difficulties.[1]

The procedure of law enforcement against international crime includes the problem of developing bilateral and multilateral cooperation in preventing and combating international criminal acts. One example of law enforcement carried out with the oldest collaboration in international legal practice is extradition.[2]

Extradition can be interpreted as a formal surrender either based on a pre-existing extradition treaty or based on the principle of reciprocity or good relations, for someone accused of a crime (suspect, accused, accused) or someone who has been convicted of a criminal sentence has definite binding power (convicted and convicted), by its place (the requested country) to the state that has jurisdiction to adjudicated or punish (the requesting country), at the request of the requesting country, with the aim to adjudicated or implemented the sentence.[3] While Mutual Legal Assistance or mutual legal assistance agreement is an agreement between two

[1] Syafrinaldi, 2006, Hukum Internasional Antara Harapan Dan Kenyataan, Pekanbaru, Riau: Penerbit Uir Press, p. 66

[2] Noer Indriati, 2009, Mutual Legal Assistance Treaties (MLATs) Sebagai Instrumen Pemberantasan Kejahatan Internasional, Jurnal Dinamika Hukum Vol. 9 No. 2 Mei 2009 : Universitas Jendral Soedirman, p. 106

[3] I Wayan Parthiana, 2004, Hukum Pidana Internasional dan Ekstradisi, Bandung: Penerbit Yrama Widya, p. 129

foreign countries for the purpose of information and information exchange in an effort to enforce criminal law. Judging from its background, as described in the Anna Maria Osula Journal written that: [4]

" International cooperation in criminal matters that, in addition to MLA,consist of a number of other cooperative measures has been developing significantly over last decades. Drivers for these developments have mainly been international communities or groups of likeminded States. Forexample, due to transnational organised crime, notably drug trafficking, the demands for international law enforcement were rapidly increasing during the 1970s and resulted in the initiation of supplementing the then common process of rogatory letters with more flexible MLA treaties".

This assistance can take the form of examining and identifying people, places and things, custody transfers, and assisting with immobilization of means of criminal activity. Assistance may be refused by one country (by the agreement details) for political or security reasons, or if the criminal violations in question are not punished equally in both countries. Some agreements can encourage assistance with legal assistance for citizens in other countries. Indonesia already has a regulation which is covering the MLA , Statute No. 1 of 2006 which came into force on March 3, 2006. This Statute regulates the scope of the MLA, the Mutual Assistance Request (MAR) procedure, and the distribution of proceeds of crime confiscated to countries that help. Also, in Law No. 15 of 2002 concerning Criminal Acts of Money Laundering, as amended by Law No. 25 of 2003 (UUTPPU), MLA issues are regulated in Articles 44 and 44A. MLA in essence can be made bilaterally or multilaterally. This bilateral MLA can be based on an MLA agreement or the basis of reciprocity between the two countries. So far, Indonesia already has several bilateral MLA cooperation agreements with Australia, China, Korea, and the US. Meanwhile, the Multilateral MLA is summarized in the Southeast Asia regional MLA that has been signed by almost all ASEAN member countries, including Indonesia.

MLA objects include taking and providing evidence. This includes statements, documents, records, identification of the location of a person, carrying out requests for the search for evidence and confiscation, searching, freezing and confiscation of assets resulting from crime, seeking approval from people who are willing to give testimony or assist investigations in MLA requesting countries. In the implementation of MLA, the Minister of Law and Human Rights as the central authority (central authority) can ask the authorized officials to carry out police actions. This includes searching, blocking, confiscating, examining letters, and taking information.

Reviewing several common cases, Singapore has become the safest place for corruptors or other criminal suspects to escape the criminal proceeds. Although there are indications that some of the suspects are in Singapore, Indonesian police investigators cannot act legally to arrest the corruptor. It is the power of sovereignty (sovereign state) that does not allow it. Under international law, law enforcement in one country cannot occupy the territory of another country by arresting someone he considers to have committed a crime and taking him back to his home country.

[4] Anna-Maria Osula, 2015, Mutual Legal Assistance & Other Mechanisms for Accesing Extraterritorially Located Data, Masaryk University Journal of Law and Technology, Vol. 9:1, p. 46.

Arrests can only be carried out by state law enforcers who have sovereignty and that only if the person is considered to threaten national security, this is also supported by judges who are very critical of the government's role in cross-border arrests that result in violations of the law. In fact, in some cases, the court refused to examine the subject matter on the grounds that it did not have jurisdiction to examine the case. This argument is consistent with Mullen's jurisprudence in the United Kingdom.[5] The background that has been explained previously will be focused into two problem formulations which include, The Practice of Cross Border Capture in the International World, and the Practice of Cross Border Capture in its Relations with Indonesia using the Descriptive Normative research method, with a legal and historical approach.

A. Practices and Mechanisms of Cross-border Arrest in The World

Since the formation of the Nuremberg Trials in 1946, developments in the quality of crime, show that territorial boundaries between one country and another in the world have increasingly disappeared, both within one region and in different regions. Extradition procedures are often complicated and more time-consuming so the government overrides the process.[6] The legality of a procedure for bringing a suspect to justice, often, is not the main concern of the state. Basically, the court still has jurisdiction to hear the subject matter of a case regardless of the method of the arrest of the suspect.[7]

Violations that occur outside the jurisdiction of the court are considered irrelevant to the jurisdiction of the court to examine the subject matter. However, in its development, the court in some countries began to abandon this principle because there was a tendency of human rights violations in the arrest. Customary international law states that a state cannot intervene in the sovereign territory of another country without the consent of the other country (SS Lotus Case (France / Turkey); Military and Paramilitary Activities in and against Nicaragua (Merits) (Nicaragua / United States)), however , inter-state arrests still continue (State v. Ebrahim; United States v. Alvarez-Machain; Bennett v. Horseferry Road Magistrates' Court and another; Decision on the Motion for Release by the Accused Slavko Dokmanovic). Ocalan's arrest by a Turkish agent in Kenya in 1999, and the arrest of

[5] *Mullen Case,* Mullen was brought back to England from Zimbabwe due to being wanted by the police. Upon his arrival, he was arrested and later convicted of conspiracy to cause explosions. He was sentenced to 30 years in prison. His application for leave to appeal his sentence was refused, however, he could later appeal his conviction. The Court of Appeal allowed Mullen's appeal. It held that while Mullen was certainly guilty (he himself admitted to have been properly convicted following a fair trial), he was still a victim of abuse of the lawful administration of justice. The Court directed that the severity of the offence alleged had to be weighed against the authorities' conduct – i.e. the authorities must have been aware of the essential need for legal advice during detention and deportation. Denial of access to legal advice breached not only Zimbabwean law but also Mullen's human rights. Had Mullen's rights been respected, he may not have been tried in England. The Court of Appeal found that the prosecution omission to voluntarily disclose information relevant to Mullen's defence also had to be taken into account. Mullen could rely on s. 2(1)(a) of 1968 Act and claim his conviction was "unsafe" even if the sole ground of appeal was that the prosecution was an abuse of process (lack of objection during trial was not fatal to the appeal). Diakses pada website: https://www.lawteacher.net/cases/r-v-mullen.php

[6] Ilias Bantekas and Susan Nash, *International Criminal Law*, London : Routledge-Cavendish, p.293

[7] *Ibid*

Nikolic by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 2002. The issue of transnational crime actually still leaves a question mark, whether it moves in personal capacity or network of groups called the Organization of Organized Crime (TOC), one of which is the arrest of suspected Taliban and Al Qaeda fighters after the September 11, 2001 tragedy shows the warm topic of cross-border arrests.[8] The Legality of Cross-Country Arrest Based on the opinions of various legal experts Louis Henkin, there are two elements in cross-country arrest namely (i) interventions from one country towards the sovereignty of another country and (ii) those interventions are aimed at bringing perpetrators of criminal offenses to justice. The reason why a country makes cross-border arrests is the absence of the type of crime that extradition can be requested in a bilateral extradition treaty (Third, Restatement of the Foreign Relations of the United States). An example is a criminal offense in the political field (*In re Castioni* Case).

Another reason is that the country where the criminal offender escaped did not want to convict the perpetrators of the crime as seen in the Pinochet case in which the Chilean government gave Pinochet a lifetime senator status so that he had legal immunity and could not be tried. Furthermore, the reason for a country banning cross-border arrests is because cross-border arrests violate the principle of sovereignty (Article 2 (4) of the UN Charter and the PCIJ ruling in the case of the Island of Palmas). In addition, cross-border arrests violate the principle of good faith (Article 26 of the Vienna Convention on the Law of International Treaties and Article 2 (2) of the UN Charter). The first step in the realization of the principle of good faith is through international cooperation (Article 86 of the Statute of the International Criminal Court and Article 88 of the First Additional Protocol to the Geneva Conventions). Legal Consequences of Cross-Country Arrest relating to Judicial Competence A. *Male Captus Bene Detentus* Principles In the last two centuries, judges in various decisions stated that the court has the competence to examine the subject matter regardless of the way the arrest was made. This is the basis of the principle of male captus bene detentus. The reason why countries make illegal arrests of criminals is because in various legal systems the presence of a suspect is sufficient to give the court the competency to hear the subject matter.[9]

---

[8] Awani irewati, 2005, Sikap Indonesia Dalam Menghadapi Kejahatan Lintas Negara : Ilegal Logging di Kalbar dan Kaltim, Jurnal Penelitian Politik Vol.2 No.1 2005 : LIPI, p. 85

[9] R v Lee Kun; *Restatement Third,* 422(2), England and Wales, A judge, from the moment he embarks upon a trial until he is functus officio that trial, is under a duty to ensure that both the process and substance of the trial is fair, and that both are duly compliant with appropriate principles. Lord Reading CJ said: '[t]here must be very exceptional circumstances to justify proceeding with the trial in the absence of the accused'. The presence of an accused person in criminal proceedings means not merely that the defendant may hear the case against him but also that he is shown to understand the proceedings and has the opportunity to make representations 'The more difficult question arises when an accused foreigner, ignorant of the English language, is defended by counsel and no application is made to the Court for the translation of the evidence… come to the conclusion that the safer, and therefore the wiser, course, when the foreigner accused is defended by counsel, is that the evidence should be interpreted to him [or her] except when he or counsel on his [or her] behalf expresses a wish to dispense with the translation and the judge thinks fit to permit the omission; the judge should not permit it unless he [or she] is of opinion that because of what has passed before the trial the accused substantially understands the evidence to be given and the case to be made against him [or her] at the trial. To follow this practice may be inconvenient in some cases and may cause some further expenditure of time; but such a procedure is more in consonance with that scrupulous care of the interests of the accused which has distinguished the administration of justice in our criminal Courts, and therefore it is better to adopt it. No injustice will be caused by permitting the

In the Eichmann Case (Israel v. Eichmann, District Court of Jerusalem), Eichmann was abducted by Israeli agents while he was in Argentina and taken to the Israeli District Court of Jerusalem to be tried for crimes against humanity and war crimes committed during World War II. Eichmann filed an exception to Israel's District Court of Jerusalem arguing that the Israeli court did not have the competence to examine the case because he was illegally brought into Israeli jurisdiction. In its decision, the District Court of Jerusalem Israel which was strengthened by the Israel Supreme Court stated that the ways to bring someone into the court's jurisdiction could not result in the court not having the competence to examine the subject matter. This is the foreign affairs of the country concerned which is outside the competence of the court. Another reason is the release of the suspect is a very expensive price to pay only because there are illegal ways to bring the suspect before the court. The social needs for crime prevention must not be impeded by reason of the lack of legality in the process of arrest. B. The principle of *Ex Injuria Non Oritur Actio* On the contrary, based on the principle of *ex injuria non oritur actio*, which is a challenge to the traditional principle of male captus bene detentus, it is stated that the government cannot be allowed to take advantage of its illegal actions while still having the competence to hear the subject matter. For this reason, the court must refuse to hear the subject matter and release the suspect. For example, in the case of Toscanino, where Toscanino is an Italian citizen who was captured and kidnapped in Uruguay by US agents and brought to Brazil. The appellate court rejected the validity of the Ker Doctrine and stated that a fair legal process is a greater goal to be achieved than the certainty of the law itself. Historically, the principle of *ex injuria non oritur actio* existed in the Roman Empire era where it was decided that sentence could not be carried out if there were abductions in cross-province arrests despite inter-governmental cooperation between the two provinces in the arrest (State v. Ebrahim).[10] In addition, based on

exception above mentioned.' Lord Reading CJ said: 'there must be very exceptional circumstances to justify proceeding with the trial in the absence of the accused'. Accesed via website : https://swarb.co.uk/rex-v-lee-kun-cca-1916/, on June 8th 2020.

[10] *State v. Ebrahim,* In *Ebrahim,* two men identifying themselves as South African police officers seized a South African member of the military wing of the anti-apartheid African National Congress in Swaziland in December 1986. Ebrahim was bound, gagged, blindfolded, and brought to Pretoria and charged with treason. Swaziland did not protest this abduction. Ebrahim argued that his abduction and rendition violated international law, and that the trial court was thus incompetent to try him because international law was a part of South African law. Invoking Roman-Dutch common law, the Court concluded that it lacked jurisdiction to try a person brought before it from another state by means of state-sponsored abduction. These common law rules embodies fundamental legal principles, including "the preservation and promotion of human rights, friendly international relations, and the sound administration of justice." The Court continued: The individual must be protected from unlawful arrest and abduction, jurisdictional boundaries must not be exceeded, international legal sovereignty must be respected, the legal process must be fair towards those affected by it, and the misuse thereof must be avoided in order to protect and promote the dignity and integrity of the judicial system. This applies equally to the State. When the State is itself party to a dispute, as for example in criminal cases, it must come to court "with clean hands" as it were. When the State is itself involved in an abduction across international borders as in the instant case, its hands cannot be said to be clean. The Court also noted that "the abduction was a violation of the applicable rules of international law, that these rules are part of [South African] law, and that this violation of these rules deprived the trial court competence to hear the matter." In a subsequent civil proceeding, Ebrahim was awarded compensation for the kidnapping. Accesed via website : https://www.cambridge.org/core/journals/american-journal-of-international-law/article/state-v-ebrahim/21C00FEE66E3248E0134254B4ACF8017, on June 8th 2020.

Roman-Dutch Law, there were many jurors in the 16th and 17th centuries who supported this principle. The reason is that several basic legal principles are contained in this principle such as the protection of human rights, good relations between countries, and a fair legal process. Individuals must be protected from illegal arrests and abductions, national boundaries must be respected, sovereignty must be respected, the legal process must be fair and arbitrariness must be avoided to achieve legal integrity. This also applies equally to countries.

When the state is a party to a case, for example in a criminal case, they must come to court with clean hands'. C. Principles of Male Captus Bene Detentus v. The principle of Ex Injuria Non Oritur Actio Interestingly, the Male Captus Bene Detentus Principle v. The Actio Ex Injuria Non Oritur principle is balanced by ICTY in the Nikolic case. The suspect in this case claimed that his arrest and detention was not legally valid because of his abduction in the Yugoslavia region and then handed over to the ICTY special agent. In this case the classic issue of male captus bene detentus is raised again: does the court still have competence over suspects who are illegally arrested? The ICTY Trial Chamber II states that unauthorized arrests do not have consequences for the competence of the court where there is no fact that there are tortures and inhumane acts when the arrest is held. The Appeals Chamber rejects the appeal of Nikolic because the evidence presented does not indicate torture and inhumane acts in the process of his arrest and as a result, his arrest procedure does not invalidate the ICTY competence to hear the subject of the Nikolic case. Legal consequences related to international human rights law The arrest of a suspect in a criminal act can lead to human rights problems. In many cases, there is physical violence in inter-state arrests, restrictions on one's freedom of movement, and threats to one's integrity. These victims were sometimes dragged, brought in tightly closed vehicles, and did not even know the motives and identities of those who made the arrests.[11] Moreover, the reduction in freedom of cross-border arrest accompanied by forced abduction has failed to follow the procedures prescribed by law. Therefore, in cross-border arrests, there are often violations of the right to freedom, the right to due process of law and the right not to be tortured. Legal Consequences in the State's Responsibility in the International Court of State The state that commits unlawful acts in cross-border arrests, especially violations of the sovereignty of other countries, violations of the principles of good faith and violations of human rights can be prosecuted in the International Court (Draft Articles on State Responsibility)). The basis of the filing of a claim (legal standing) is the principle of direct injury. For example, if there is a violation of international treaties. In addition, countries whose citizens are victims can also sue to the International Court of Justice based on the principle of citizen protection (diplomatic protection). Cross-border Arrest in Indonesian National Law

B. Practices and Mechanisms of Cross-Country Arrests in Its Relations with Indonesia

International crime can also be referred to as a form of transnational crime by covering four aspects, namely: a). Locus delicti in more than one country; b). Other countries become places for preparation, planning, and direction and

[11] Evans (1964) Acquisition of Custody Over the International Fugitive Offender -- Alternatives to Extradition: A Survey of United States Practice, Brit Y.B. Int'l, L 77

supervision; c). There is the involvement of organized crime groups where crime is committed in more than one country and; d). Having a serious impact on other countries. Indirectly, the above provisions are elements that are based on inter-state capture.[12] Cross-border arrests are synonymous with transnational crimes, which are called Transnational Crimes. Furthermore, what will be an example in the following discussion is the crime of Terrorism, as written in the Ben Saul Journal, it is stated that:[13] Less well explored is the extent to which international terrorism can be effectively addressed through the legal frameworks for suppressing other transnational crimes. In some cases, terrorist acts may alternatively qualify as such crimes. In other cases, terrorist groups may incidentally commit such crimes to support their core terrorist activities. In yet other situations, there may be tactical alliances or cooperation between organised crime groups and terrorist organisations which involve criminality, for instance in providing expertise, resources, or other support. Implicitly stated that the crime of terrorism in the journal is part of Transnational Crime. The following is the practice of cross-border arrests exemplified in the eradication of terrorism in Indonesia.

In their efforts to eradicate terrorism in Indonesia, the case of Umar al-Farouq and Hambali can be used as an example of how the practice of cross-border arrest in Indonesia. Hambali, an Indonesian citizen identified as Mantiqi I leader from Jemaah Islamiyah was arrested in Bangkok on August 11, 2003. He was captured by US intelligence (CIA) and taken via a special aircraft owned by the United States to the United States military base in Baghram, Afghanistan. Hambali is sought by the governments of the United States, Indonesia, the Philippines, Malaysia, Singapore, and Thailand because of his acts of terror that threaten these countries. Unfortunately, Hambali's inspection access after the arrest was monopolized by the United States government. Hambali's whereabouts are still being questioned because of the seriousness of the Indonesian government to try him in an Indonesian court.[14] Before Hambali, another Al Qaeda leader, Al-Farouq, was arrested at a mosque in Bogor, Indonesia on June 5, 2002, through the cooperation of Indonesian and CIA intelligence agencies.[15] By becoming a participant in the Vienna Convention on International Treaties, the Convention on Civil and Political Rights and the UN Charter, it clearly shows that Indonesia has an international obligation not to make cross-border arrests where such arrests constitute violations of the sovereignty of other countries, violations of human rights and the principle of good faith. Suspects/defendants who are victims of cross-border arrests can submit pretrial / exception legal remedies. With regard to pretrial legal remedies regulated in Article 82 of the Criminal Procedure Code. The technical authority of law enforcers in arresting people abroad, for example, when arresting a suspect in

[12] Roni Gunawan Raja Gukguk, 2019, Tindak Pidana Narkotika Sebagai Transnasional Organized Crime, Jurnal Pembangunan Hukum Indonesia Program Studi Magister Ilmu Hukum Fakultas Hukum Universitas Diponegoro Volume 1, Nomor 3, Tahun 2019, p. 338-339.

[13] Saul, Ben, The Legal Relationship between Terrorism and Transnational Crime (May 4, 2017). International Criminal Law Review, Vol. 17, No. 3 pp. 417-452, 2017; Sydney Law School Research Paper No. 17/37 p. 1

[14] Tempo, *Bom-bom Maut Hambali*, 25-31 August 2003; *International Crisis Group*, *Terorisme di Indonesia: Jaringan Nurdin Top,* 5 Mei 2006.

[15] *Human Rights Watch*, 25 Maret 2003

Singapore, can only be persuaded or awaited by the suspect until overstayed until his passport can be revoked so that it can be deported by Singapore law enforcement (immigration). Our law enforcement authority applies if the suspect is on an Indonesian state-owned aircraft such as Garuda Indonesia, Lion Air, or Batavia, also with a note that it has already been in the Proboscis Elephant (Garbarata) Soekarno Hatta airport.

II. Conclusions and Recommendations

Prevention of cross-border capture can be done through, inter alia, negotiations, mediation, conciliation, arbitration, and courts (Article 33 of the UN Charter). In the event of a conflict between a country's obligations in international treaties and the UN Charter, the obligations in the UN Charter must take precedence (Article 103 of the UN Charter). For example, the facts that occurred in the case of Nazaruddin. Since disappearing and reportedly in Singapore, Nazaruddin seems to be 'comfortable' living in Singapore in spite of all the preaching to him. Without the ratification of the extradition treaty, Nazaruddin's status as a foreign citizen (WNA) becomes his protector from arrest by the KPK and the Police, this makes the ratification of the extradition treaty a very urgent matter. The longer the DPR delays ratification, the more difficult it is for the KPK and Polri performance to capture corruptors as well as transnational criminals and fleeing organized crimes. Not to weaken the sovereignty of the state, but in reality, the pattern of the escape form of corruptors or other suspects has been read. Indonesia needs to apply this agreement to every country it considers as a transit country for corruptors. However, as a start, Singapore must be a top priority. Therefore, Indonesia is expected to be able to maximize the ability of its diplomacy towards other countries to prevent cross-border arrests.

Bibliography

Evans (1964) Acquisition of Custody Over the International Fugitive Offender -- Alternatives to Extradition: A Survey of United States Practice, Brit Y.B. Int'l.

Ilias Bantekas and Susan Nash, *International Criminal Law*, London : Routledge-Cavendish

I Wayan Parthiana, 2004, Hukum Pidana Internasional dan Ekstradisi, Bandung: Penerbit Yrama Widya

Syafrinaldi, 2006, Hukum Internasional Antara Harapan Dan Kenyataan, Pekanbaru, Riau: Penerbit Uir Press.

Articles

Tempo, *Bom-bom Maut Hambali*, 25-31 August 2003; *International Crisis Group*, *Terorisme di Indonesia: Jaringan Nurdin Top,* 5 Mei 2006.

Human Rights Watch, 25 Maret 2003

Journal

Anna-Maria Osula, 2015, Mutual Legal Assistance & Other Mechanisms for Accesing Extraterritorially Located Data, Masaryk University Journal of Law and Technology, Vol. 9:1

Awani irewati, 2005, Sikap Indonesia Dalam Menghadapi Kejahatan Lintas Negara : Ilegal Logging di Kalbar dan Kaltim, Jurnal Penelitian Politik Vol.2 No.1 2005 : LIPI.

Noer Indriati, 2009, Mutual Legal Assistance Treaties (MLATs) Sebagai Instrumen Pemberantasan Kejahatan Internasional, Jurnal Dinamika Hukum Vol. 9 No. 2 Mei 2009 : Universitas Jendral Soedirman.

Roni Gunawan Raja Gukguk, 2019, Tindak Pidana Narkotika Sebagai Transnasional Organized Crime, Jurnal Pembangunan Hukum Indonesia Program Studi Magister Ilmu Hukum Fakultas Hukum Universitas Diponegoro Volume 1, Nomor 3, Tahun 2019.

Saul, Ben, The Legal Relationship between Terrorism and Transnational Crime (May 4, 2017). International Criminal Law Review, Vol. 17, No. 3 pp. 417-452, 2017; Sydney Law School Research Paper No. 17/37