

SUMMARY OF INDONESIAN EXTRADITION LAW (LAW No. 1 Year 1979)

Definition of Extradition:

Extradition means the surrender by one State to another state which requests the surrender of a person who is accused or convicted on account of the commission of crime outside the territory of the surrendering state and within the jurisdiction of the territory the state requesting the said surrender based on its right to try and convict the said person

The Basic Principles of Indonesian Extradition Law

Extradition shall be granted on the basis of a treaty. In the absence of a treaty, extradition may be granted on the basis of good relationship and if the interest of the State of the Republic of Indonesia so requires.

Double Criminality i.e. the act committed should be considered as a crime by the requesting state as well as by the requested state. This principle is mentioned in the list of the extraditable crimes affixed as an appendix of this Law (Article 4);

If a certain crime is regarded by the requested state as a political crime, the request for extradition will be refused (Article 5);

The requested state has the right to refuse to surrender its nationals (Article 7);

If the crime has been committed in whole or in Part in the territory falling or is considered to be falling under the jurisdiction of the requested state, this state may refuse the request for extradition (Article 8);

A request for extradition may be refused if the Competent authorities of the requested state are proceeding against the person concerned in respect of the crime for which extradition has been requested (Article 9);

If in respect of a certain crime, the judgment passed by the competent court of the requested state has become final, the request for extradition will be refused (Article 10);

A person shall not be surrendered if the right to prosecute or the right to execute a penal sentence has expired by reason of lapse of time (Article 12);

The extradited person shall not be prosecuted, sentenced or detained on account of any other crime committed prior to the extradition, than for the crime for which he has been surrendered, unless the state requested to surrender the said person approves to it (Article 15).

The decision concerning request for extradition is not a decision of the judicial body but is a decision of the executive body, therefore as a last instance the decision lies in the hands of the President after having received a judicial advice from the Minister of Justice based on an order of the court.

Request for Extradition

The request for extradition is communicated to the President through the Minister of Justice by the competent authorities of the alien state through the diplomatic channel. The said request for "extradition shall be supported by the required documents, among others concerning identity, nationality, statement of the crime for the commission of which he has been accused, the request for provisional arrest. If the person sought is wanted to carry out a sentence the request for extradition shall be accompanied by the original or an authenticated copy of the sentence of the court and the warrant of arrest. The said documents shall be supported by legal written evidence. In case of urgency, before the request for extradition is sent, the competent authorities in Indonesia may put

the said wanted person under provisional arrest on the request of the requesting country.

Requirements for Arrest Requested by the Requesting State

Indonesia provides specific measures to handle urgent requests only in connection with extradition. Pursuant to the Law on Extradition, requests for provisional arrest may be sent directly to the Police Chief or the Attorney General through the diplomatic channel, Interpol, post, or telegram. In addition, the Law on Extradition imposes some deadlines in order to expedite the extradition process, e.g., a requesting state must formally request extradition within 60 days of the provisional arrest of the person sought.

The Head of Police of the Republic of Indonesia or the Attorney General of the Republic of Indonesia may order the arrest requested by another state in case of urgency provided that the arrest is not contrary to the law of the Republic of Indonesia.

The issue of a warrant for the apprehension or the arrest of the person concerned is made according to the provisions of the code of criminal procedure of Indonesia.

The decision on the request for arrest shall be communicated to the requesting state by the Head of Police of the Republic of Indonesia or the Attorney General of the Republic of Indonesia through the INTERPOL Indonesia or through the diplomatic channel or direct by post or telegraph.

Refusal of Extradition

Indonesia generally does not extradite its nationals unless it determines that the person sought ought to be tried in the requesting state, having regard to “the interest of the state, law and justice.” For an Indonesian national to be extradited on this basis, the requesting state must provide an assurance of reciprocity. Prior to refusing to extradite

a national, the Indonesian authorities will consult their counterparts in the requesting state.

Indonesia will also refuse extradition if the crime involved is punishable by death in the requesting state but not in Indonesia, unless the requesting state provides an assurance that the penalty will not be carried out. The requesting state must provide the assurance in a letter attached to the extradition request along with translations of the letter in the English and Indonesian languages.

Indonesia will also refuse extradition in respect of a political crime.