

Paving The Way For International Cooperation: Policy Urgency The Law Of Intercountry Transfer Of Prisoners In Indonesia

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Abstrak: *The lack of regulations on the transfer of prisoners between countries in Indonesia is an obstacle to establishing international cooperation on this matter. The large number of Indonesian citizens who are imprisoned abroad and need legal protection is an important reason for Indonesia to resolve this issue. The absence of regulations on the transfer of prisoners between countries needs to be addressed immediately to ensure legal protection for Indonesian citizens imprisoned at home and abroad. This research aims to study the extradition process in Indonesia and the importance of legal protection for Indonesian citizens imprisoned abroad for committing criminal offenses. The results obtained are that government efforts to protect Indonesian citizens abroad have been made, but need to be improved by strengthening coordination, increasing resources, and establishing international cooperation.*

Keywords: *Interstate, Government, Transfer of Prisoners.*

INTRODUCTION

Laws in Indonesia continue to develop following the needs of society, including in terms of the guidance of prisoners in correctional institutions or commonly called lapas. This correctional system was established with noble goals, namely: 1) Fostering inmates to become good citizens, where this coaching process aims to change the behavior and mindset of prisoners so that they can return to society and live productively and responsibly; 2) Protecting the community from the possibility of recidivism for a criminal offense, which with effective guidance, it is hoped that prisoners will no longer commit crimes after being released from prison.¹

Protecting all its citizens is a fundamental obligation for every state, including Indonesia. This is affirmed in the 4th paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia.

This protection is not limited to the territory of Indonesia, but applies throughout the world. Furthermore, the state's obligation to protect its citizens abroad is guaranteed in Article 28D paragraph (1) of the 1945 Constitution. This article states that "Everyone has the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law". Keep in mind that every individual whose existence is the territory of a country, automatically obeys the laws and regulations enforced by the country. This is a basic principle of state sovereignty. However, in the context of protecting Indonesian citizens abroad, there are dimensions of diplomacy and international law that need to be considered. The state is obliged to fight for the rights and interests of its citizens abroad, even though they are subject to the laws of the local state.² Although foreign

¹ Penjelasan Umum UU No. 12 Tahun 1995 tentang Pemasarakatan

² B. Sen, A Diplomat's Handbook on International Law and Practice, (The Hague: Martinus Nijhoff, 1965), hlm. 279.

nationals must abide by the laws and regulations of the country they are in, they are still entitled to protection from their home country. This is based on the principles of international law and diplomacy.³

Policy can be defined as: "A series of actions whose design and implementation is to achieve a certain goal for the benefit of the whole community." This policy is not only limited to ideas, but must be realized in the form of concrete actions that can bring positive changes to society.⁴ Correctional Institution or prison in other words, has an important role in realizing the purpose of punishment, as explained by Lamintang. According to him, there are three main objectives of punishment, namely: 1) Improving the personal of prisoners, in which the correctional center plays a role in fostering and guiding prisoners to become better individuals, by equipping them with skills, knowledge, and positive values; 2) Providing a deterrent effect, where prisons provide a deterrent effect to prisoners through the application of strict and fair punishments and sanctions; 3) Maintaining community security, namely that prisons play a role in maintaining community security by locking up prisoners who have the potential to endanger the community.⁵ Correctional institutions play an important role in realizing order and justice in society through the development of prisoners. The correctional system is the main foundation in efforts to tackle crime and reoffending. By overcoming various challenges and increasing coaching efforts,

it is expected that correctional institutions can carry out their functions optimally and contribute to the creation of a safe and prosperous society.

Inter-country transfer of prisoners, an increasingly common practice in the international world, carries a noble goal, namely to protect the human rights of prisoners by providing facilities in the form of a rehabilitation process in their home country. This is based on various obstacles faced by foreign prisoners in undergoing rehabilitation in other countries' prisons, such as differences in language, culture, religion, customs and habits. These constraints are feared to reduce the speed in the process of rehabilitation, resocialization and reintegration of prisoners, thus hampering the achievement of the objectives of the correctional system. By serving the sentence in the country of origin, these constraints can be minimized, paving the way for easier and more effective social reintegration.

METHOD

This research uses a normative juridical approach, which is conducted to examine the practice and regulation of interstate prisoner transfers. This approach is carried out by analyzing principles, concepts, doctrines and legal norms and also interpreting legal politics, this research is expected to provide a comprehensive understanding of the transfer of prisoners between countries in Indonesia.

RESULT AND DISCUSSION

1. Procedure and Implementation of Extradition Under Indonesian National Law

The regulation of the transfer of prisoners between countries is based on two legal pillars, namely: 1) International Law, which studies international treaties

³ L. Oppenheim, *International Law, a Treatise*, Volume I, Peace, (London: Longmans, 1967), hlm. 686.

⁴ Ridwan H.R. 2017. *Hukum Administrasi Negara*, Raja Grafindo, Jakarta, hlm. 46.

⁵ P. A. F. Lamintang dan Theo Lamintang, *Hukum Penitensier Indonesia*, Sinar Grafika, Jakarta, 2012, hlm. 11.

that have legal implications for the state and the meaning of state sovereignty in these treaties; 2) Indonesian National Law, which covers the principles of criminal procedure, penitentiary and correctional system. The transfer of prisoners between countries presents a crucial issue related to state sovereignty. When transferring prisoners to another country, the country of origin seems to "share" its sovereignty. Vice versa, when requesting the transfer of prisoners, the receiving country "asks" for the sharing of the sovereignty of another country. The transfer of prisoners between countries involves complex considerations that touch on aspects of international and national law, with state sovereignty as the main focus.

The Integrated Criminal Justice System is a criminal case resolution system that emphasizes coordination and cooperation between institutions that enforce the law, such as the police, prosecutors or courts. The aim is to enforce the law and protect human rights effectively and efficiently. According to Mardjono Reksodiputro, it is said that: "The criminal justice system is a system in a society to overcome the problem of crime. Overcoming here means an effort to control crime so that it is within the limits of society's tolerance." The Integrated Criminal Justice System (ICCS) is considered successful if it meets several criteria, namely: 1) Most reports and complaints from the public related to criminal offenses can be resolved; 2) Perpetrators of crimes are found guilty and sentenced accordingly; 3) Perpetrators of crimes are successfully brought to court.⁶

The Extradition Act, namely Act No. 1 Year 1979, is the benchmark for national law to extradite perpetrators of

crimes. This law regulates the procedures and requirements that must be met in the extradition process. Chapter X of Law No. 1/1979 discusses extradition requests by the Indonesian government, acting as the requesting state. Article 44 confirms that: "If a person is suspected of committing a crime or serving a sentence for committing a crime that is extraditable within the jurisdiction of the Republic of Indonesia and is suspected to be in a foreign country, then at the request of the Attorney General of the Republic of Indonesia, the Minister of Justice of the Republic of Indonesia on behalf of the President, may request the extradition of such person which must be submitted through diplomatic channels."

Article 45 provides that "The surrender of the requested person to Indonesia. According to this article, if the person whose extradition is requested in article 44 has been surrendered by a foreign state, the person shall be brought to Indonesia and handed over to the competent authority." If Indonesia is the requesting country and the extradition request is granted by the requesting country, then Indonesia is responsible for picking up the suspect to the location specified by the requesting country. This is reasonable as Indonesia has a great interest to try and punish the suspect. Indonesian authorities must retrieve and bring back the suspect to the country.

Article 46 of Law No. 1/1979 on Extradition provides that: "the procedure for the delivery and temporary detention of the person requested for extradition (suspect) will be regulated in a government regulation." However, in bilateral extradition treaties that Indonesia has agreed with other countries, such as Thailand, Malaysia, and the Philippines, the procedures for the handover and temporary detention of extradition suspects are subject to the laws of the requested country (extradition destination country).

⁶ Mardjono Reksodiputro, Sistem Peradilan Pidana Indonesia: Peran Penegak Hukum Melawan Kejahatan, (Jakarta: Lembaga Kriminologi UI, 1994), hlm. 84.

This means that the procedures for the handover and temporary detention of extradition suspects follow the rules and legal provisions in the extradition destination country, not based on Indonesian laws and regulations.

2. Urgency of Legal Protection for Indonesian Citizens who Commit a Criminal Offense Abroad

The Indonesian government has important duties, functions and roles in the life of the nation. This role is crucial for the survival and progress of the nation. Through its roles, the Indonesian government tries to protect all Indonesian people, including the homeland. In addition, the government also focuses on advancing the welfare of the people, educating the nation's life, and contributing to maintaining world order. These efforts are made with the aim of achieving national interests and realizing national goals. This is envisioned to be achieved through the implementation of good governance by the Indonesian government.

The government has important functions, such as protecting the community, organizing social life, providing public services, and building and developing the nation. The government also has broad duties and obligations, including making regulations related to public services, being the creator of a society that has a sense of security and orderly behavior, developing productive resources, preserving cultural values, strengthening national unity, developing a democratic life, realizing equity and justice, preserving the environment, upholding and implementing laws and regulations, organizing national development, and protecting the establishment, preservation and integrity of the Unitary State of the Republic of

Indonesia. One of the government's main duties is to protect all its citizens.⁷

The primary function of a diplomatic representative, under the 1961 Vienna Convention, is to represent the sending country in the receiving country. Diplomatic representatives must abide by international law in protecting the interests of the sending country's citizens in the receiving country. Diplomatic representatives are also tasked with establishing communication and making agreements between the sending and receiving countries. In addition, diplomatic representatives are obliged to report circumstances and developments in the receiving country to the government of the sending country in accordance with applicable laws. Another important function is to maintain harmonious and respectful relations between the two countries. Diplomatic representatives should endeavor to resolve disputes and enhance bilateral cooperation.⁸

The Indonesian Constitution, particularly Article 28D(1), guarantees the right of every citizen to protection from the state, wherever they are. This is a manifestation of fundamental human rights. This protection includes recognition, guarantees, and fair legal certainty, as well as equal treatment before the law. The state's obligation to protect its citizens is not only a responsibility, but also a fulfillment of their human rights. On the other hand, every individual residing in a country's territory, without exception, has an obligation to abide by the values and regulations that apply in that territory. Respecting local norms and laws is a universal obligation that must be obeyed in order to maintain order and smooth social life.⁹ Despite complying with the regulations of their country of residence,

⁷ Pasal 28D ayat (4) UUD RI tahun 1945

⁸ Konvensi Wina 1961

⁹ B Sen, *Op. Cit.*

foreign nationals (WNA) are still entitled to protection from their home country. This protection is given based on the principle of reciprocity, where the foreigner's home country provides protection with the consideration that his country also protects Indonesian citizens in his country.¹⁰

The Correctional Act, Law Number 12 of 1995, does not yet regulate the transfer of prisoners between countries. This results in Indonesia not having a strong legal basis to enter into agreements for the transfer of prisoners with other countries. Although international law states that states are responsible for protecting their citizens abroad, including through diplomatic protection, Indonesia requires more specific regulations to facilitate the transfer of prisoners between countries. Conceptually, diplomatic protection is "*action taken by a state against another state in respect of injury to the person or property of a national caused by an internationally wrongful act or omission attributable to the latter state*".¹¹ Policies for the protection of citizens abroad are essentially the same in providing protection for their safety and security. However, these policies can also vary between countries, depending on factors such as political, economic and social conditions in the destination country.

CONCLUSION

1. The regulation of interstate prisoner transfers in Indonesia is complex and involves various legal aspects. State

sovereignty is the main consideration, and the process must follow procedures stipulated in relevant laws and international treaties. Indonesia's integrated criminal justice system also plays an important role in resolving criminal cases involving the transfer of prisoners between countries.

2. The role and function of the Indonesian government in protecting citizens abroad is very important. The government has made various efforts to provide protection to Indonesian citizens abroad. However, there are still some challenges that need to be faced. Therefore, it is necessary to improve coordination, resources and international cooperation to increase the effectiveness of the protection of Indonesian citizens abroad.

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