



NATIONAL CHAPTER
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LOCAL CHAPTER LEGAL WRITINGS

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JURIDICAL ANALYSIS ON POLITICAL CHARACTER OFFENSE PHRASE IN INDONESIA LAW NUMBER 5 YEAR 2023

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A. Heading

To : ALSA National Chapter Indonesia
From : Delvino Ahmad Hidayat Lolianto, Valentino Juan Sundah
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Subject : The Implementation of Treaty Between Indonesia-Singapore for
The Extradition of Fugitives
Date : January 31st, 2023

B. Statement of Assignment

This legal memorandum provides answer and our perspective regarding the meaning of Political Character Offence Phrase on Treaty Between Indonesia-Singapore for the Extradition of Fugitives Article 4 paragraph 1(a).

C. Issues

The Law of the Republic of Indonesia Number 5 Year 2023 (“**Law 5/2023**”) concerning the Treaty Between The Government of the Republic of Indonesia and the Government of the Republic of Singapore for the Extradition of Fugitives was finally enacted by Commission III of The House of Representative of the Republic

of Indonesia on the 13th Plenary Meeting on December 15th, 2022.¹ This law officially enacted the implementation of procedural and mechanisms of fugitives extradition which were agreed upon by the Parties. This treaty regulated 31 crimes which extradition can be carried out against it.² However, there is a blurred legal norm in Article 4 paragraph 1(a) on Mandatory Exception to Extradition, which regulated that Requested Party shall refuse to grant the extradition request of a crime that indicates political character crimes.³ Based on that issue, it is questioned, what is the parameter of “political character crimes” and how this law be implemented?

D. Brief Answer

1. Based on the writer’s juridical analysis, the “political character offense” phrase can be defined as an intent of criminal acts involving the public interest with the aim and function of institutions and constitutional relations. The crimes committed are based on the political desire of the perpetrator to achieve certain wishes correlated with the government and the state. The crime committed by the offender aimed to change the law in a certain state.
2. The implementation of this phrase needs a judicial review by both Parties to not cause formal losses when fugitives are discharged as a result of their crimes indicating political character. A comprehensive discussion is needed to avoid abuse of authority and to maintain the political stability between the Parties.

E. Statements of Facts

¹ DPR RI, ‘DPR dan Pemerintah Sahkan RUU Perjanjian Indonesia-Singapura tentang Ekstradisi Buronan Jadi UU’ (2022) <https://www.dpr.go.id/berita/detail/id/42422/t/DPR+dan+Pemerintah+Sahkan+RUU+Perjanjian+Indonesia+Singapura+tentang+Ekstradisi+Buronan+Jadi+UU> (accessed on 5 February 2023)

² Law Number 5 of 2023 Concerning Treaty Between The Government of The Republic of Indonesia and The Government of The Republic of Singapore for The Extradition of Fugitives (State Gazette of the Republic of Indonesia Year 2023 Number 5)

³ *Ibid.*

The ratification of the Treaty Between Indonesia-Singapore for Extradition of Fugitives shows facts as follows:

1. That in forming the treaty for extradition of fugitives, the Indonesian Government has been overwhelmed with many run-away fugitives to Singapore. One of which is Harun Masiku, the suspect of bribery case of The House of Representatives Member Election against former Commissioner of General Election Commission, Wahyu Setiawan. Harun Masiku flee Singapore on January 6th, 2020.⁴
2. On the other hand, in 2004, Nunun Nurbaeti done bribery on Bank Indonesia Senior Deputy Governor election. She was named as the suspect, left Indonesia, and immediately listed in DPO (Daftar Pencarian Orang) since February 2011. She was then arrested in Thailand.⁵
3. That with existence of many run-aways suspect to Singapore with the purpose of either hiding or transiting, makes it more difficult for the Indonesia Government to convict the fugitives due to jurisdiction. Thus, both Parties agreed to initiate the forming of Treaty between Indonesia-Singapore for Extradition of Fugitives, ratified through Law 5/2023.⁶
4. That Law 5/2023 was one of the preventive efforts of both parties to restrain the movement of fugitives after the District Court of Requesting Party named them as the suspect.

F. Analysis/Discussion

The current development for advanced living, make human seems to have easy access to achieve what they desire, one of which, is Indonesia's fugitives to avoid the legal process by fleeing overseas, precisely Singapore.⁷ The geographic

⁴ CNN Indonesia, 'Daftar Koruptor yang Sempat Kabur ke Singapura' (2022) <https://www.cnnindonesia.com/nasional/20220126103706-12-751365/daftar-koruptor-yang-sempat-kabur-ke-singapura> (accessed on 5 February 2023)

⁵ *Ibid.*

⁶ Sekretariat Kabinet Republik Indonesia, 'RUU Perjanjian Indonesia-Singapura tentang Ekstradisi Buronan Disahkan Jadi UU' (Humas, 2022) <https://setkab.go.id/ruu-perjanjian-indonesia-singapura-tentang-ekstradisi-buronan-disahkan-jadi-uu/> (accessed on 5 February 2023)

⁷ CNN Indonesia, 'Daftar Koruptor yang Sempat Kabur ke Singapura' (2022) <https://www.cnnindonesia.com/nasional/20220126103706-12-751365/daftar-koruptor-yang-sempat-kabur-ke-singapura> (accessed on 5 February 2023)

and social factors of Singapore, which are strategic and correlated to Indonesia, bolster the fugitive's choices. Singapore as the "heaven" for Indonesian's fugitives, is often used as a place to stay, hide, or even changed nationality.⁸ It restricts Indonesia Law Enforcement in carrying out the legal process of fugitives due to legal jurisdiction. This phenomenon initiates Indonesia Government and Singapore Government to collaborate by initiating the Treaty for Extradition of Fugitives which contains the fugitives' extradition execution as well as the prohibition and responsibility of each party.

("Law 5/2023") regulates the responsibility of each parties to extradite the other party's criminal offender accordingly if they were found in Requested Party's territory. ("Law 5/2023") officially regulated 31 crimes which extradition can be carried out against it according to both parties' law.

Quoting the statement of the Ministry of Law and Human Rights, Yasonna Lauly, ("Law 5/2023") has a retroactive characteristic and extending in scope to prior 18 years before it was legislated. On the other hand, this agreement also regulates the offender's nationality determined based on the nationality when they committed the crime.⁹ Therefore, this agreement became such a "fresh air" for Indonesia Government in carrying out the legal process of suspect who changes their nationality. Furthermore, it also regulates an article regarding a mandatory exception for extradition, to be precise in Article 4. However, if we take a closer look, there is one phrase with multiple interpretations which concerned the writer(s), especially in Article 4 paragraph 1(a) which reads as follows:

*"where the Requested Party determines that the offense which extradition is requested is **an offense of a political character**."*

The paragraph mentioned that Requested Party may refuse the extradition if the committed crimes indicate political character. Whereas the last paragraph of

⁸ Kemenkumham, 'Ekstradisi RI dan Singapura Sah jadi UU, Buronan Tidak Bisa Sembunyi di Singapura Lagi' (Biro Humas, Hukum dan Kerjasama, 2022) <https://www.kemenkumham.go.id/berita-utama/ekstradisi-ri-dan-singapura-sah-jadi-uu-buronan-tidak-bisa-semunyi-di-singapura-lagi> (accessed on 5 February 2023)

⁹ *Ibid.*

the article mentioned if there any question arises regarding whether a certain crime indicates political character, it will determine based on the Requested Party's interpretation. This phrase certainly raise a polemic amidst the treaty, because there is no single piece of literature, neither on criminal code, criminal-law procedure code, or other law, ever mention this "political characteristic offense" phrase.¹⁰ Additionally, this treaty for extradition of fugitives not regulates general provision(s), which makes this phrase even more ambiguous, and the legal norm becomes blurry if we try to define and implement it.

The phrase "political character offense" can be divided into 3 (three) variable, such political, character, and offense, which can be interpreted separately through Indonesian Dictionary. Offense means a criminal act (crime). Character means psychological characteristics, morals, or manners that distinguish one person to other. Meanwhile, political means knowledge of constitutional or state affairs.¹¹ Thus, if we incorporate them into the phrase "political character offense" means a criminal act with a close relation and intention act to constitutional or state affairs.

The phrase also can be interpreted as an action or deed committed in connection with the functioning of the state or state institutions, which is based on political motivation to be able to change the law in accordance with the wishes of the subject. This phrase also contains terms regarding political offenses in criminal law, which contain sub-elements as its characteristic, among them:¹²

1. Crimes committed by the perpetrator aimed at the state and the state's institutional functioning;
2. Crimes committed aimed to change the law of a certain state;
3. The subject of offense based its deed on altruistic motive; and

¹⁰ Hotman Siahaan, 'Tindak Pidana Terhadap Keamanan Negara Dalam Perspektif Delik Politik di Indonesia' (2019) [6]

¹¹ KBBI, 'Kamus Besar Bahasa Indonesia' (accessed on 8 February 2023).

¹² David Hardiogo, 'Delik Politik Dalam Hukum Pidana Indonesia' (2020) 50 Hukum & Pembangunan. [18]

4. Crimes committed by the subject based on political motives.

On the other side, criminal law politics can be interpreted as an integrated legal political movement in criminal policy hence implemented in criminal laws, either criminal code, criminal-law procedure code, or other laws. The background of the offense is important in determining whether a crime is a political crime or not.¹³ However, political character offenses are often found in a bribery cases. The deed was done to fulfil the need of the subject to have a certain position in the government.¹⁴ In addition, no codification in criminal laws regarding the definition of politics can raise 2 (two) perspectives in society: first, the state is considered to have no political ideological background; second, those crimes have no political background. Thus, the political character offense needs a clear definition.¹⁵ Hence, there are no multi interpretations that will lead to ward off their offenses.

G. Conclusion

The definition of “political character offense” led to assumptions on the boundaries of this phrase enforcement. No codification of this phrase raises a multi interpretations which can be used to avoid the legal process. Crimes closely related to a political character need a more intense study to determine their qualification and not jeopardize the public interest.

However, if we try to define this phrase, can be concluded that political crimes offense is a series of criminal acts involving the public interest with the aim and function of institutions and constitutional relations. It should be the focus of both governments in redefining this phrase and not burden it on one party. The Requested Party’s acquittal determination of this phrase could be used as a “protection tool” for fugitives to not serve their sentence in Requesting Party’s

¹³ Rena Yulia, ‘Politik Hukum Pidana Dalam Perlindungan Terhadap Korban Kejahatan di Indonesia’ (2012) Hukum dan Peradilan [21]

¹⁴ Endri, ‘Penanggulangan Kejahatan Pidana Politik Dalam Undang-Undang Pemilihan Umum’ (2014) 1 Selat [10]

¹⁵ *Ibid.*

territory. A rigid distinction of political character offense is very much needed to protect and create a national stabilization for both parties.

BIBLIOGRAPHY

Books

Dr. Maroni, S.H., M.Hum, Pengantar Politik Hukum Pidana (Aura 2013).[33].

Journals

David Hardiagio, 'Delik Politik Dalam Hukum Pidana Indonesia' (2020) 50 Hukum & Pembangunan. [18]

Endri, 'Penanggulangan Kejahatan Pidana Politik Dalam Undang-Undang Pemilihan Umum' (2014) 1 Selat [10]

Hotman Siahaan, 'Tindak Pidana Terhadap Keamanan Negara Dalam Perspektif Delik Politik di Indonesia' (2019) [6]

Rena Yulia, 'Politik Hukum Pidana Dalam Perlindungan Terhadap Korban Kejahatan di Indonesia' (2012) Hukum dan Peradilan [21]

Irwan Sapta Putra, 'Perjanjian Ekstradisi Antara Indonesia Dengan Singapura Di Tinjau Dari Hukum Pidana' (2022) 2 Jurnal Res Justitia [11]

Websites

Kemenkumham, 'Ekstradisi RI dan Singapura Sah jadi UU, Buronan Tidak Bisa Sembunyi di Singapura Lagi' (Biro Humas, Hukum dan Kerjasama, 2022) <https://www.kemenkumham.go.id/berita-utama/ekstradisi-ri-dan-singapura-sah-jadi-uu-buronan-tidak-bisa-semunyi-di-singapura-lagi> (accessed on 5 February 2023)

Sekretariat Kabinet Republik Indonesia, 'RUU Perjanjian Indonesia-Singapura tentang Ekstradisi Buronan Disahkan Jadi UU' (Humas, 2022) <https://setkab.go.id/ruu-perjanjian-indonesia-singapura-tentang-ekstradisi-buronan-disahkan-jadi-uu/> (accessed on 5 February 2023)

CNN Indonesia, 'Daftar Koruptor yang Sempat Kabur ke Singapura' (2022) <https://www.cnnindonesia.com/nasional/20220126103706-12->

[751365/daftar-koruptor-yang-sempat-kabur-ke-singapura](#) (accessed on 5 February 2023)

DPR RI, 'DPR dan Pemerintah Sahkan RUU Perjanjian Indonesia-Singapura tentang Ekstradisi Buronan Jadi UU' (2022) <https://www.dpr.go.id/berita/detail/id/42422/t/DPR+dan+Pemerintah+Sahkan+RUU+Perjanjian+Indonesia-Singapura+tentang+Ekstradisi+Buronan+Jadi+UU> (accessed on 5 February 2023)

KBBI, 'Kamus Besar Bahasa Indonesia' (accessed on 8 February 2023)

Regulation

Law Number 5 of 2023 Concerning Treaty Between The Government of The Republic of Indonesia and The Government of The Republic of Singapore for The Extradition of Fugitives (State Gazette of the Republic of Indonesia Year 2023 Number 5)



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