The Effectiveness of Extradition Process

Extradition refers to a State surrendering an individual to another State for the purpose of criminal trial or punishment. In this modern time, issues of crime are no longer confined within a country but have gone global, evidenced by the widely reported cases of fugitive criminals such as Muhammad Rizalman, Sirul Azhar Umar and Low Taek Jho.

Malaysia has proven its commitment in upholding justice through its Extradition Act 1992 ("the EA") and the Mutual Assistance in Criminal Matters Act 2002. In order to combat international crimes, Malaysia has signed extradition treaties with countries like Australia, Thailand and South Korea.

However, Malaysia has set certain conditions on extradition of a fugitive criminal. Malaysia would only extradite a fugitive criminal for an extradition offence, which includes fiscal offences (a) which if punishable under laws of a country with imprisonment for not less than a year or with death and (b) which if committed within Malaysia is punishable with imprisonment for not less than one year or with death.¹

Malaysia will not surrender a fugitive criminal to a requesting country in the following circumstances:
(1) If the offence in respect of which his return is sought is of a political character;
(2) If the request for his surrender is on account of his race, religion, nationality or political opinion;
(3) If he might be prejudiced at his trial in the requesting country on account of his race, religion, nationality or political opinions;

¹ Section 6, Extradition Act 1992
(4) If prosecution for the offence in respect of which his return is sought is barred by the law.²

A fugitive criminal shall not be detained or tried in the requesting country for any offence prior to his return, unless consent of the appropriate authority in the requested country has been obtained. However, this restriction does not apply if there is provision made by the law of the requesting country or is provided in the extradition treaty with the requesting country.³

However, despite the law is being put in place and international cooperation amongst countries in signing extradition treaties exist, the extradition process, in practice, has been slow and monotonous.

Case in point: the extradition process in South Korea. Once the International Criminal Affairs Division of Ministry of Justice in South Korea reviews an extradition request and where all the formalities and substantive requirements under the treaty are met, the Chief Prosecutor of Seoul High Prosecutor Office will file an application for an extradition hearing to the Seoul High Court. The decision of the Seoul High Court on the extradition application may however be reviewed by the Ministry of Justice. The strict requirement of dual criminality in the law of extradition exercised by countries including Thailand, Singapore and Malaysia in considering a request for extradition too has made the extradition process difficult.

The concept of extradition seems impressive on the face of it with the noble intention to fight crime but when it comes to enforcement and the practical aspect, it is another story altogether. Though many countries have extradition laws being put in place, it still depends very much on what is being agreed to between countries in their extradition treaties.

Malaysia’s Home Minister Tan Sri Muhyiddin Yassin has voiced the difficulties in the process of extradition of Low Taek Jho to Malaysia, over his connection with 1Malaysia Development Bhd (1MDB). Till date, the requested country has not provided its cooperation to Malaysia to extradite Low Taek Jho. Whereas in the case of extradition of Sirul Azhar Umar, who was convicted and sentenced to death for the murder of Mongolian Altantunya Shaariibuu but managed to flee to Australia, the Australian Attorney-General Department will only agree to extradite Sirul on the condition that death penalty will not be imposed on him.

There is no doubt that a good legal framework and mechanism supported by strong cooperation amongst countries is vital for the development of a well-functioning extradition system. Before signing any extradition treaties, government of a country

² Section 8, Extradition Act 1992
³ Section 8(3), Extradition Act 1992
is however advised to study closely the workings of extradition laws of the country with which it is to sign the treaty with. This is crucial so that both parties could work out an effective treaty that will achieve the fundamental objective of fighting crime and fugitive criminals could ultimately be brought to justice.