


## EXTRADITION AGREEMENT AND POLICE TO POLICE COOPERATION IN THE LENS OF RESPONSIVE LAW

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Article	Abstract
<p><b>Keywords:</b> <i>Extradition, Responsive Law, Police-to-Police</i></p> <p><b>Article History</b> Received: Oct 30, 2025; Reviewed: May 07, 2026; Accepted: May 19, 2026; Published: May 26, 2026;</p>	<p>This study examines the practice of surrendering fugitives between Indonesia and foreign countries, which is primarily conducted through two mechanisms: extradition treaties and police to police (P to P) cooperation under Interpol coordination. This duality raises fundamental questions regarding the differences in legal construction, effectiveness, and the extent to which each mechanism aligns with the principles of responsive law. The purpose of this research is to analyse the normative, procedural, and practical foundations of both mechanisms and to assess how well they reflect the characteristics of a responsive legal system as formulated by Philippe Nonet and Philip Selznick. The research employs a normative legal approach, combining doctrinal analysis of relevant laws and international agreements with theoretical interpretation of the concept of responsive law. The study focuses on provisions in extradition laws, bilateral treaties, and the principles guiding international cooperation by the Indonesian National Police through Interpol channels.</p>

The findings indicate that the extradition mechanism, with its formal legal basis and strong inter-state obligations, more closely embodies a responsive legal system by ensuring accountability, transparency, and legal certainty. In contrast, the P to P mechanism—while more flexible and efficient in practice—tends to be pragmatic and does not fully reflect the principles of legal responsiveness. Nevertheless, its flexibility and efficiency make P to P the preferred operational choice for law enforcement agencies in handling cross-border fugitive cases. In short, extradition treaty should be the default choice in an ideal situation where the clauses are applicable and P to P is the choice that can be used when the condition requires flexibility and pragmatism, especially when there is no extradition treaty that can be used as a base to extradite.



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## Introduction

Criminal offenses, whether domestic in nature or transnational in scope, necessitate the establishment of a mechanism that enables the enforcement of law against suspects who cross national borders. Grounded in the principle of sovereignty, each state holds the inherent right to uphold the supremacy of its own laws and to protect every person within its jurisdiction. The practice of surrendering a criminal offender who is in flight (fugitive offender) to another state for the purpose of prosecution or punishment is known as extradition.<sup>1</sup> Such a practice is, of course, not carried out gratuitously, rather, it is premised upon the goodwill and reciprocity between the two states undertaking the extradition.<sup>2</sup>

<sup>1</sup> Siswanto Sunarso, *Ekstradisi dan Bantuan Timbal Balik dalam Masalah Pidana Instrumen Penegakan Hukum Pidana Internasional*, Cet. Pertama (Rineka Cipta, 2009), p. 2.

<sup>2</sup> *Ibid.*

Extradition emerged as a customary practice, and it was not until after the Second World War that extradition treaties began to proliferate, serving as the legal framework governing the surrender of criminal offenders to their country of origin.<sup>3</sup> However, this does not mean that extradition can only be carried out through a formal mechanism between two or more states bound by an extradition treaty. In practice, there are states that remain willing to extradite criminal offenders to their country of origin even in the absence of a binding extradition treaty, on the basis of the principles and rules of law governing extradition that have become part of customary international law.<sup>4</sup>

The implementation of extradition in Indonesia is carried out by a series of actors within the national legal system. Pursuant to Law Number 1 of 1979 on Extradition (*Undang-Undang Nomor 1 Tahun 1979 tentang Ekstradisi*, hereinafter "the Extradition Law"), the parties involved in the execution of extradition include, at a minimum, the Indonesian National Police (*Kepolisian Republik Indonesia*, hereinafter "Polri"), the Attorney General, the Minister of Justice, and the President. Nevertheless, the institution responsible for carrying out the technical execution of extradition is Polri, acting through Interpol Indonesia. On the other hand, the police, through Interpol, also employ a Police to Police (P to P) mechanism, which is likewise frequently utilized in the apprehension of criminal offenders who cross national borders.

By definition, the Police to Police (P to P) mechanism constitutes a form of information-sharing cooperation designed to direct and gather evidence in support of an ongoing investigation in an efficient manner.<sup>5</sup> In practice, however, this mechanism has also been

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<sup>3</sup> *Ibid.*

<sup>4</sup> I Wayan Parthiana, *Hukum Pidana Internasional dan Ekstradisi*, Cet. Pertama (Yrama Widya, 2003), p. 128.

<sup>5</sup> "Mutual assistance versus police-to-police cooperation," *Sherloc (Sharing Electronic Resources and Laws on Crime)* (Sherloc UNODC), accessed

employed to apprehend fugitives, as evidenced by the arrest of Djoko Tjandra in Malaysia, the arrest of Adrian Gunadi in Qatar, and the apprehension of a Chinese national with the initials LQ in Bali.<sup>6</sup> In essence, extradition treaties and the Police-to-Police (P-to-P) mechanism share the same overarching objective, yet differ significantly in their approach. According to the assessment of Polri, the P-to-P mechanism is considered more efficient than the formal extradition process, which adopts a Government-to-Government (G to G) approach and is notably time-consuming.<sup>7</sup>

Several studies have found that the P to P mechanism represents a more readily implementable option, as has been examined by Zheng and Lu.<sup>8</sup> A further study conducted by Calcara found that the mechanism operating within Interpol provides an independent form of cooperation that is not constrained by diplomatic barriers.<sup>9</sup> A

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October 26, 2025, [https://sherloc.unodc.org/cld/lessons-learned/fin/mutual\\_assistance\\_versus\\_police-to-police\\_cooperation.html](https://sherloc.unodc.org/cld/lessons-learned/fin/mutual_assistance_versus_police-to-police_cooperation.html).

<sup>6</sup> Aji Prasetyo, "Mengenal Diplomasi Police to Police Yang Mengakhiri Pelarian Djoko Tjandra," *HukumOnline.Com*, August 3, 2020, <https://www.hukumonline.com/berita/a/mengenal-diplomasi-police-to-police-yang-mengakhiri-pelarian-djoko-tjandra-lt5f280c3b8aa56/>; Zefanya Aprilia, "Begini Cerita Di Balik Penangkapan Buron Adrian Gunadi Di Qatar," *CNBC Indonesia*, September 26, 2025, <https://www.cnbcindonesia.com/market/20250926193314-17-670629/begini-cerita-di-balik-penangkapan-buron-adrian-gunadi-di-qatar>; Dian Rahma Fika, "Buron Interpol Cina Ditangkap Di Bali, Polri: Indonesia Paling Proaktif Mengejar Buron Red Notice Interpol," *Tempo*, October 11, 2024, <https://www.tempo.co/hukum/buron-interpol-cina-ditangkap-di-bali-polri-indonesia-paling-proaktif-mengejar-buron-red-notice-interpol-33>.

<sup>7</sup> Aprilia, "Begini Cerita Di Balik Penangkapan Buron Adrian Gunadi Di Qatar."

<sup>8</sup> Zhichao Zheng and Yihan Lu, "Research on International Police Cooperation from the Perspective of Game Theory – Take Extradition Cooperation as an Example," *Journal of Research in Social Science and Humanities* 3, no. 4 (2024): 55-60, <https://doi.org/10.56397/JRSSH.2024.04.10>.

<sup>9</sup> Giulio Calcara, "A Transnational Police Network Co-Operating up to the Limits of the Law: Examination of the Origin of INTERPOL,"

further finding at the practical level in Indonesia, as documented by Nuban et al., indicates that the extradition mechanism was likewise deemed unsuccessful and ineffective when applied in the case of Djoko Tjandra.<sup>10</sup> Krcmaric, in his research, further found that extradition treaties in the United States are also politically motivated, concluded with the broader aim of extending reach in order to ensure political influence by targeting political adversaries residing abroad.<sup>11</sup> Nevertheless, other studies have found that the bureaucratic process required under extradition treaties still plays a significant role, particularly in cases where an extradition request is denied, which should ideally result in the removal of the Interpol red notice issued against a fugitive.<sup>12</sup>

The practices carried out by law enforcement authorities, together with several academic studies, have revealed a position that calls into question the relevance of extradition in the form of treaties and legal mechanisms. Rather than providing flexible room for maneuver through an accessible mechanism, extradition treaties have, on the contrary, become a space that is particularly susceptible to politicization. It is against this backdrop that the present study seeks to examine the relevance of extradition treaties in light of the P to P mechanism currently employed by the police through Interpol, as well as to determine the circumstances under which extradition treaties and the P to P mechanism should ideally operate.

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*Transnational Legal Theory* 11, no. 4 (2020): 521-48, <https://doi.org/10.1080/20414005.2020.1793282>.

<sup>10</sup> Julio Benyamin Nuban et al., "Tinjauan Yuridis Pelaksanaan Perjanjian Ekstradisi Indonesia-Malaysia (Studi Kasus: Djoko Soegiarto Tjandra)," *Artemis Law Journal* 2, no. 1 (2024): 14-29, <https://doi.org/10.35508/alj.v2i1.16170>.

<sup>11</sup> Daniel Krcmaric, "Nowhere to Hide? Global Policing and the Politics of Extradition," *International Security* 47, no. 2 (2022): 7-47, [https://doi.org/10.1162/isec\\_a\\_00444](https://doi.org/10.1162/isec_a_00444).

<sup>12</sup> Y. L. Nemets et al., "Extradition and Interpol," *International Enforcement Law Reporter* 40, no. 9 (2024): 379-88.

## Method

This research is a normative legal research that uses secondary data in the form of primary and secondary legal materials. The primary legal materials used are laws and regulations and international agreements regarding extradition and the P to P mechanism. The approach used in this study is laws and regulations supported by conceptual and comparative approaches. The analysis in this study was carried out qualitatively by comparing the legal framework, mechanisms, and advantages and disadvantages of the extradition mechanism and P to P using parameters obtained from responsive legal theory.

## Result and Discussion

The approach used in this study begins with an exploration of the laws and regulations that regulate and relate to extradition in Indonesia and the P to P mechanism. Conceptually, using responsive legal theory, the collected material will be compared in utility to assess the relevance of the existence of extradition and P to P which has more or less the same pragmatic function. So, the discussion of the results of this research will be carried out in 3 rounds. First, the legal framework that regulates extradition will be described in the form of an international agreement that has been carried out by Indonesia and also the P to P mechanism. Second, a comparison between the extradition mechanism through international agreements and P to P based on responsive legal theory will be presented. Third, an elaboration of the advantages and disadvantages will be carried out to determine under what conditions extradition through international agreements and P to P can be enforced.

## A. Legal Framework and Mechanism

Extradition in Indonesia is regulated in various legal instruments. The main one is the Extradition Law. General provisions regarding extradition include:

1. double criminality;
2. rejection of requests for political crimes;
3. the state may refuse if:
  - a. the request is against its citizens;
  - b. criminal acts committed within their jurisdiction; and
  - c. there is an ongoing inspection process;
4. non bis in idem; dan
5. A person who is handed over is only indicted, convicted, or detained for the crime he committed and nothing more than that unless the state is asked to approve.<sup>13</sup>

Extradition provisions are also found in various international treaties, generally bilateral, conducted by the Government. The extradition treaty substantively regulates matters of a more technical nature and special application that are agreed between the two countries. The following is a list of bilateral international agreements of the Government of Indonesia regarding extradition.

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<sup>13</sup> M. Budiarto, *Masalah Ekstradisi dan Jaminan Perlindungan atas Hak Asasi Manusia*, Cet. Pertama (Ghalia Indonesia, 1980), p. 18.

TABLE 1. Extradition Treaty of the Republic of Indonesia

No.	Negara	Nama Perjanjian
1.	Government of Malaysia (1974)	Treaty between the Government of the Republic of Indonesia and the Government of Malaysia relating to Extradition
2.	Republic of the Philippines (1976)	Extradition Treaty between the Republic of Indonesia and the Republic of the Philippines and the Protocol
3.	the Government of the Kingdom of Thailand (1976)	Treaty between the Government of the Republic of Indonesia and the Government of the Kingdom of Thailand relating to Extradition
4.	Australia (1992)	Extradition Treaty between the Republic of Indonesia and Australia
5.	Republic of Korea (2000)	Treaty on Extradition between the Republic of Indonesia and the Republic of Korea
6.	the People's Republic of China (2009)	Treaty between the Republic of Indonesia and the People's Republic of China on Extradition
7.	Republic of India (2011)	Extradition Treaty between the Republic of Indonesia and the Republic of India

8.	the Independent State of Papua New Guinea (2013)	Extradition Treaty between the Republic of Indonesia and the Independent State of Papua New Guinea
9.	the Socialist Republic of Viet Nam (2013)	Extradition Treaty between the Republic of Indonesia and the Socialist Republic of Viet Nam
10.	the Islamic Republic of Iran (2016)	Treaty between the Republic of Indonesia and the Islamic Republic of Iran on Extradition
11.	the Republic of Singapore (2022)	Treaty between the Government of the Republic of Indonesia and the Government of the Republic of Singapore for the Extradition of Fugitives

Sumber: *Treaty Room* of the Ministry of Foreign Affairs<sup>14</sup>

In general, the content of the extradition treaty that Indonesia has entered into consists of, but is not limited to:

1. statement and provisions of extradition obligations;
2. the type of criminal act that can be extradited;
3. Territory Clause (norms regarding territory, state boundaries, and crime scenes)
4. basis for extradition (the presence of sufficient evidence);

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<sup>14</sup> “Daftar Perjanjian Internasional,” n.d., accessed October 27, 2025, <https://treaty-room.kemlu.go.id/daftar-perjanjian>.

5. extradition that must be refused/exemption from the extradition obligation; (Among them is whether or not there is a death penalty, *non bis in idem*, crime is a political crime, tried by *an ad hoc* court, a military crime, a request based on SARA<sup>15</sup> or political views, and there is a belief that the suspect will be treated discriminatory)
6. voluntary exemption (refusal) to extradition (criminal threat under 12 months, state requested to decide not to initiate or stop prosecution, fugitive is a citizen of the requested country, criminal acts committed in the territory of the requested country, violation of international treaties if granted, and extradition based on the law of the requesting country)
7. procedures (central authorities and means of communication, requests, authentication, and language of supporting documents; temporary detention, additional information, notification of decision on extradition requests, surrender, voluntary surrender, simple extradition, surrender of goods/property, transit, representation and fees, concurrent requests, delay of surrender, evidence, resurrender, re-extradition, consultation, and mutual assistance.
8. special provisions/principles of specificity (special provisions, and that the extradition treaty does not affect the international obligations of the state party);
9. dispute resolution;
10. the amendment of the extradition treaty; and
11. Enforcement and termination of the agreement.

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<sup>15</sup> Ethnic Group, Religion, Religion, Inter-Group (Suku, Agama, Ras, Antargolongan).

The extradition treaty regulates the general matters as well as the technical matters of extradition. Based on this description, it can be seen that extradition is covered by various provisions and restrictions. In addition, the extradition process is cross-institutional in nature, involving:

1. The Chief of the National Police in:
  - a. processing and executing detentions;
  - b. receive a request for detention;
  - c. deliver the decision on the request for detention;
  - d. release the person whose detention is requested from detention;
  - e. received a completed extradition request letter from the Minister of Justice;
2. The Prosecutor's Office in:
  - a. receive a request for detention;
  - b. deliver the decision on the request for detention;
  - c. release the person whose detention is requested from detention;
  - d. received a completed extradition request letter from the Minister of Justice;
  - e. examining the person whose surrender is requested;
  - f. summoning the person to whom his surrender is requested;

3. The Minister of Justice in:
  - a. accept the extradition request and forward it to the President;
  - b. decide on the completeness of the extradition request requirements and examine their improvements;
  - c. received a completed extradition request letter from the Minister of Justice;
  - d. examining the person whose surrender is requested;
  - e. decide on follow-up to extradition requests;
4. The President in receiving extradition requests through the Minister of Justice;
5. The court in:
  - a. examine the attachment certificate of the extradition request;
  - b. examining the criminal acts of the person whose surrender is requested;
  - c. decide whether or not the person whose surrender is requested to be extradited;
  - d. submit the verdict for consideration to the Prosecutor's Office.<sup>16</sup>

In general, the pattern used in arranging extradition agreements between Indonesia and partner countries has the same substance as has been listed. The pattern found in the

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<sup>16</sup> M. Budiarto, *Ekstradisi dalam Hukum Nasional*, Cet. Pertama (Ghalia Indonesia, 1981), p. 18-23.

extradition treaty is that there have been updates, or at least additions, of regulated content over time, especially since 2011. The content of agreements made after 2011 has differences in the form of clauses that are not in the agreements before 2011, and there are even clauses that are only found in certain countries. For example, in the agreements with Malaysia (1974), the Philippines (1976), and Thailand (1976), there are no provisions regarding central authority, mutual assistance, voluntary surrender, and international obligations. In particular, the agreement with Iran (2016) is the only one that includes a clause on re-extradition, and the agreement with Singapore (2022) is the only one that regulates the requirement of a *prima facie* case (there is sufficient evidence) as the basis for extradition and includes a clause on the language of the document. Based on these findings, it can be seen that Indonesia's extradition treaty has developed over time and different clauses between one country and another, of course, with the agreement of both parties.

The extradition process in the Extradition Law and the extradition treaty takes time and energy. Reflecting on the process that applies in the follow-up of extradition requests submitted to the Government of Indonesia, of course, the processing of extradition requests in other countries when the Government of Indonesia submits a request is at least as long. This is because the handover of perpetrators of criminal acts is not only a matter of handing over people, but has a close relationship with state sovereignty and the protection of human rights.<sup>17</sup>

The National Police through the National Central Bureau (NCB) Interpol network has recorded several arrests of Indonesian citizens who commit criminal acts abroad and

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<sup>17</sup> Sunarso, *Ekstradisi dan Bantuan Timbal Balik dalam Masalah Pidana Instrumen Penegakan Hukum Pidana Internasional*, p. 33.

foreigners who commit criminal acts in Indonesia. In addition to Djoko Candra and Adrian Gunadi, the P to P *cooperative* has arrested and handed over Thonduang Chaowalit to the Government of the Kingdom of Thailand and Alice Guo or Guo Hua Ping to the Philippines.<sup>18</sup> However, P to P *cooperation* does not always lead to the handover of the perpetrators of criminal acts to the relevant state government. In the case of Adrian Gunadi (AG) who was arrested with Alan Perdana Putra (APA), it was reported that only APA could be directly handed over to NCB Interpol Indonesia, because AG had a *golden visa* and *permanent residence* in Qatar so his repatriation to Indonesia could only be done through the extradition mechanism.<sup>19</sup>

The arrest process carried out through NCB Interpol was carried out using *red notices*. A red notice is a request to law enforcement officers in the Interpol network to find and make a temporary arrest of a person while awaiting extradition, surrender, or similar legal action.<sup>20</sup> Provisions regarding *red notices* can be found in *Section 2 of INTERPOL's Rules on the Processing of Data* regarding *provisions specific to red notices*. In *article 83* the document explains that:

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<sup>18</sup> DHI, "Buronan No. 1 Thailand Thonduang Chaowalit Dipulangkan," *Divhubinter Polri* (Jakarta), June 4, 2024, <https://divhubinter.polri.go.id/newsdetail/194>; "Kerja Keras Divhubinter Polri Membuahkan Penangkapan Buronan Paling Dicari Di Filipina," *Divhubinter Polri* (Jakarta), September 6, 2024, <https://divhubinter.polri.go.id/newsdetail/226>.

<sup>19</sup>"NCB Interpol Indonesia Sukses Amankan Buronan INTERPOL Red Notice A.A.G. Dari Qatar Ke Indonesia," *Divhubinter Polri*, September 26, 2025, <https://divhubinter.polri.go.id/newsdetail/414>.

<sup>20</sup>*Red Notices* (Interpol), accessed October 28, 2025, <https://www.interpol.int/en/How-we-work/Notices/Red-Notices>.

1. *Red notices* may be published if:
  - a. the criminal act committed is a serious ordinary criminal act;
  - b. the criminal threat is a maximum of 2 years of deprivation of liberty or has been sentenced or must serve the rest of the prison sentence for at least 6 months; and
  - c. requests in accordance with the interests and objectives of international police cooperation.
2. A red notice *request* must include:
  - a. identification includes name, gender, date of birth, and physical description, DNA profile, fingerprint, or data contained in identity documents; or
  - b. photos with good quality and additional data such as aliases, parents' names, physical descriptions, DNA profiles, fingerprints, and so on.
3. The issuance of *red notices* can be done if it meets the legal data, at least:
  - a. a summary of the facts of the case describing the criminal activities of the person being sought including the time and place of the alleged crime;
  - b. indictments;
  - c. the legal provisions that are violated;
  - d. maximum criminal offense that can be threatened, sentenced, or must be settled; and

- e. a reference to a valid arrest warrant or court order that has the same function.

The request *for red notices* is reviewed by the Secretary General of Interpol for later publication.<sup>21</sup> For *red notices* that have been issued, the police of the country that finds the wanted person must notify the NCB of the requesting country and take necessary and permissible steps in accordance with national law, such as making temporary detentions, supervising, or restricting the movement of the wanted person.<sup>22</sup>

Compared to the mechanism that runs in extradition agreements, the P to P international cooperation provided by Interpol is much simpler. The P to P mechanism does not require a specific agreement, and certainly does not require the bureaucratic and political processes necessary to lead to the signing of the agreement. Technically, both use an extradition mechanism, but P to P cooperation provides an opportunity for law enforcement officials to have a relatively faster response time and not be bound by bureaucracy between agencies.

In concept, extradition agreements and P to P cooperation carry out an international custom of handing over fugitives for criminal acts that are outside the jurisdiction of a country. However, the submission mechanism contained in INTERPOL's *Rules on the Processing of Data* provides a wider space for movement in P to P cooperation through *article 82* which has the wording "...for the purpose of extradition, surrender, or similar lawful action." The *article* provides room for surrender in the form of extradition, surrender, or similar lawful action. Thus, in practice, the police can take discretion to hand over or accept fugitives through the mechanism of handing over or disguised extradition (covert extradition) which is based on Article 18 of Law Number

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<sup>21</sup> Article 86 INTERPOL's Rules on the Processing of Data

<sup>22</sup> Article 87 INTERPOL's Rules on the Processing of Data

2 of 2002 concerning the National Police of the Republic of Indonesia (Undang-Undang Nomor 18 Tahun 2002 tentang Kepolisian Nasional Republik Indonesia, hereinafter UU Polri) which regulates the authority to act through its own decision by National Police officials.<sup>23</sup>

The P to P cooperation does provide flexible space for movement and allows the police to move quickly in arresting fugitives for criminal acts. However, the process passed in the mechanism has minimal participation from other state institutions, as stipulated in the Extradition Law and extradition treaties that have been signed by Indonesia. Thus, in terms of legal legitimacy, the potential for procedural violations and violations of the rights of suspects or convicts is greater in P to P cooperation than with mechanisms based on laws and extradition agreements.

## **B. Extradition Agreements and P to P Cooperation in the Lens of Responsive Law**

As explained in the previous section, the mechanisms contained in the P-to-P extradition and cooperation agreement have significant differences both from the stages and the actors involved in it. In short, it can be seen that P to P cooperation is 'superior' in terms of efficiency and speed. Thus, can such a mechanism replace an extradition treaty?

Criminal acts in general, especially transnational crimes, require speed and flexibility of enforcement from law enforcement officials. However, speed will always be the opposite of precision, especially procedurally and substantively. Moreover, the P to P cooperation runs without supervisors from other institutions but the Secretary General of Interpol and the National Police in the Indonesian context, so the

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<sup>23</sup> Jan S. Maringka, *Ekstradisi dalam Sistem Peradilan Pidana*, Cet. Pertama (Sinar Grafika, 2019), p. 96.

aspects of protecting human rights and following procedures with applicable provisions are very important to be considered. In assessing these two mechanisms, a model is needed that can be used to assess the utility and legitimacy of each method.

Responsive legal theory is a proposition offered by Nonet and Selznick as an ideal model of legal positions in a society that is divided into a repressive, autonomous, and responsive legal system.<sup>24</sup> According to Nonet and Selznick, the parameters of a responsive legal system are as follows:

**TABLE 2. Parameters and characteristics of responsive law**

Parameters	Characteristics
Legal Purpose	Competencies
Legitimacy	Substantive justice
Rules	Based on principles and objectives
Reasoning	Purpose; Expansion of cognitive competence
Discretion	Expanded, but accountable to the purpose
Coercion	Active search for alternatives
Morality	Civil morality; "The Morality of Cooperation"
Politics	Integrated legal and political aspirations; Mixing of power

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<sup>24</sup> Phillippe Nonet dan Philip Selznick, *Toward Responsive Law: Law and Society in Transition* (Routledge, 2017), p. 15.

Expectations of Compliance	Disobedience is judged on the substance of the loss
Participation	Access is expanded through the integration of legal and social advocacy

Source: Nonet dan Selznick<sup>25</sup>

These parameters are used to assess law as a system holistically. Therefore, adjustments are needed to assess the extradition agreement and P to P cooperation in the surrender of fugitives. Legal objectives, reasoning, coercion/coercion, politics, and expectations of compliance are aspects of parameters that cannot be used because they are closely related to the position of law as a system and mechanism of law formation rather than its enforcement. Thus, the parameters that will be used in this study include legitimacy, rules, discretion, morality, and participation.

**Legal Purpose**

The paradigmatic function of responsive law is regulation, and regulation is a mechanism to clarify the public interest through the process of explanation and correction of the policies required from a legal objective.<sup>26</sup> The purpose of the law is the competence of law enforcement officials to be able to respond to issues and problems that occur in the community. This competence is also closely related to the cognitive ability and resilience of each actor in the political stage in dealing with an issue.<sup>27</sup> The basic assumptions of efforts to improve the competence of legal institutions consist of:

1. designing and evaluating institutions that are built based on the objectives that the law seeks to achieve; and

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<sup>25</sup> *Ibid.*, p. 16.

<sup>26</sup> *Ibid.*, p. 108-109.

<sup>27</sup> *Ibid.*, p. 26.

2. the legal task is to reduce arbitrariness in the elaboration of these objectives.<sup>28</sup>

Nonet and Selznick explained that to control arbitrariness, it should be done in ways that facilitate rather than hinder, namely strengthening institutional competence, because the greater the responsibility of law enforcement officials, the greater the incompetence will be the source of arbitrariness.<sup>29</sup> Thus, competence in the context of legal objectives consists of the cognitive competence of the actors and the competence of the law to solve issues.

To the extent that the legal goal is in the form of the surrender of fugitives, the mechanism of extradition agreements and P to P cooperation has fulfilled these objectives. Although, the high and low level of arbitrariness in the process of implementing the surrender of fugitives is highly dependent on the cognitive abilities of law enforcement officials. However, if you look at the procedures of the two mechanisms, the extradition treaty has the advantage of ensuring a minimum level of arbitrariness with the involvement and coordination between institutions to ensure that the level of arbitrariness is low. Because the P to P mechanism does not provide space for coordination between domestic institutions that can supervise the actions of each actor, so the achievement of legal goals is highly dependent on the cognitive competence possessed by the police. In terms of competence in the context of legal ability to respond to issues, it is necessary to conduct a special empirical study to see the extent to which extradition agreements and P to P cooperation have an impact on resolving the issue of law enforcement of cross-border crimes.

### Legitimacy

For Nonet and Selznick, the legitimacy of a responsive legal system is manifested in the form of substantive justice. Substantive

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<sup>28</sup> *Ibid.*, p. 112.

<sup>29</sup> *Ibid.*, p. 110.

justice itself is interpreted as the expected result of an ‘impeccable method’.<sup>30</sup> Thus, substantive justice requires a perfect method. The same thing is stated by Rawls, that when formal justice, the rule of law, and the honoring of legitimate expectations are found, it is very likely that substantive justice will be found.<sup>31</sup> Thus, the main parameter in determining substantive justice as the legitimacy of a responsive legal system is the perfect method/process.

Extradition treaty and the P-to-P cooperation has a mechanism set out in a binding legal document. Both have a clear legal basis regarding the mechanism for carrying out fugitive surrender. Extradition treaties tend to provide complete arrangements regarding procedures for handling the extradition process from the request stage to surrender, mutual assistance, and even re-extradition. Although each agreement has provisions that are not exactly the same, there are provisions that are mandatory in each agreement. On the other hand, P to P cooperation has a legal basis in *INTERPOL's Rules on the Processing of Data* and is regulated only in *articles 82 to 87*. The provision also does not regulate the matters regulated in the extradition treaty, especially regarding the surrender of fugitives to the requesting country which is regulated by providing loopholes beyond extradition. Thus, in terms of legitimacy based on substantive justice, extradition treaties have at least had a way to bring substantive justice to arrested fugitives with a complete mechanism.

## Rules

Rules, for Nonet and Selznick, depend so much on their relevance and continuity on the right historical conditions, that when conditions change they must be updated to maintain the integrity of their application.<sup>32</sup> So, ideally, rules are made based on principles and

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<sup>30</sup> *Ibid.*, p. 67.

<sup>31</sup> John Rawls, *A Theory of Justice*, Revised Edition (Harvard University Press, 1999), p. 52.

<sup>32</sup> Nonet dan Selznick, *Toward Responsive Law: Law and Society in Transition*, p. 81.

goals. Every applicable law has a value that provides context and a comprehensive understanding of the purpose of a law.

The purpose of extradition according to I Made Pasek Dhianta can be reviewed from 3 (three) points of view, namely the state, the victim, and the perpetrator. The state is protected by the absence of interference by other states within its territory, the victim gets justice by punishing the perpetrator, and the perpetrator is protected his rights in the process of surrender to the requesting state.<sup>33</sup> On the other hand, in the context of law enforcement, extradition can be understood as an attempt to prosecute a person for a crime he or she is suspected of committing.<sup>34</sup>

The extradition treaty fulfills all of these objectives. Extradition treaties protect the jurisdiction and sovereignty of the state from foreign interference, extradition of fugitives is carried out so that they can be tried, and extradition treaties generally regulate the rights of fugitives to be extradited. To a certain extent, *the P to P cooperation* also fulfills the purpose of handing over fugitives through its mechanism. *The P to P cooperative* provides free movement space for the police to arrest and hand over fugitives, so that the possibility of being tried by fugitives will be higher when compared to the extradition mechanism which has long stages and involves several state institutions. In addition, in terms of the jurisdiction and rights of the perpetrators of criminal acts, the mechanism that has been established by Interpol always uses the term "*subject to national law*" and the like to show that in the implementation of Interpol's duties, the national police remain subject to the laws that are binding in the country. Thus, the objectives related to jurisdiction are achieved, although the purpose of protecting the rights of the perpetrator is then relatively in accordance with the applicable laws in the country where he is arrested.

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<sup>33</sup> I Made Pasek Diantha, *Hukum Pidana Transnasional: Suatu Studi Awal*, Pertama (Kencana, 2020), p. 122-123.

<sup>34</sup> Maringka, *Ekstradisi dalam Sistem Peradilan Pidana*, p. 5.

## Discretion

In their thesis, Nonet and Selznick formulated that discretion has a place in a responsive legal system with purpose-based expansion. Discretion is an emergency door that must always exist in the event of an emergency that is not predicted by law. When discretion is exercised, a responsive legal system will still adhere to matters that are essential to its integrity while still taking into account new impulses in the environment.<sup>35</sup> In the end, discretionary decisions are still needed and even expanded, assuming that their use is accompanied by integrity and a view that is inseparable from the purpose.

P to P cooperation has discretion based on Article 18 of the National Police Law which reads:

- (1) It is in the public interest that officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their own judgment.
- (2) The implementation of the provisions as intended in paragraph (1) can only be carried out in very necessary circumstances by paying attention to laws and regulations, as well as the Professional Code of Ethics of the National Police of the Republic of Indonesia.

The explanation from paragraph (1) of the article states that "acting according to his own judgment" means that the action taken must consider the benefits and risks of his actions and is aimed at the public interest. The extradition law regulates that in the event of a request for detention to Indonesia, the request is submitted to the Chief of Police (Kapolri) or the Attorney General through Interpol Indonesia or diplomatic channels or directly by post or telegram. Thus, technically the police have broad discretionary authority in the context of extradition.

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<sup>35</sup> Nonet dan Selznick, *Toward Responsive Law: Law and Society in Transition*, p. 77.

In addition, *INTERPOL's Rules on the Processing of Data* have also provided an open space regarding technical submissions, either through extradition, surrender, or similar forms. The practice carried out to hand over fugitives other than extradition and surrender is *disguised extradition* in the form of deportation and abduction. Deportation is an administrative act of immigration that repatriates a person to his or her country of origin for violation of immigration or other laws and abduction is an extra-territorial attempt at the extra-territorial arrest of a particular country's law enforcement officials in another country or, in other words, kidnapping.<sup>36</sup> Namun, red notice telah dan rentan dimanfaatkan secara politis, proses pemeriksaan berkas tidak perlu mencantumkan perintah pengadilan (*court order*).<sup>37</sup> Sehingga isu mengenai diskresi yang berbasiskan pada tujuan dalam kooperasi P to P sangat bergantung pada pemegang wewenang di tubuh kepolisian.

Perjanjian ekstradisi, di sisi lain, tidak mengatur secara eksplisit kewenangan diskresi oleh Kepolisian, Jaksa Agung, Menteri, maupun Peradilan. Perjanjian ekstradisi yang ditandatangani oleh Pemerintah Indonesia sependek ini memberikan wewenang untuk lembaga-lembaga negara tersebut dalam kapasitas untuk melaksanakan teknis perjanjian dan memberikan pertimbangan serta rekomendasi. Sehingga, perjanjian ekstradisi yang ditandatangani Pemerintah Indonesia hanya mengatur diskresi secara terbatas.

## Morality

Nonet and Selznick based the concept of cooperative morality popularized by Jean Piaget to define the morality of a responsive legal system. The morality of cooperation is the result of a study by Piaget

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<sup>36</sup> Diantha, *Hukum Pidana Transnasional: Suatu Studi Awal*, p. 140-143.

<sup>37</sup> Sam Medeham, "Weaponizing the Police: Authoritarian Abuse of Interpol," *Harvard International Review* 43, no. 2 (2022): 6-11.

which shows that there are two types of morality, namely the *morality of constraint or of heteronomy* and the *morality of cooperation (of cooperation or of autonomy)*.<sup>38</sup> Piaget stated that a sense of justice can be cultivated through the development of mutual respect and solidarity.<sup>39</sup> The main points of the morality of cooperation are cooperation, solidarity, and mutual respect. In the context of the state, this is done in the legal system as a value held in order to form a law that is responsive in creating substantive justice.

The mechanism in extradition agreements and P to P cooperation has an element of cooperation in it. Extradition treaty cooperation consists of domestic cooperation involving state institutions (police, prosecutor's office, ministries, courts, and presidents) and also international (communication between countries and mutual relations). P to P cooperation accommodates international cooperation within the scope of Interpol members. International police cooperation is not tied to intergovernmental relations, but rather based on internal police factors and political reasons that encourage the state (government) to cooperate.<sup>40</sup> Thus, the assessment depends on the police and is not carried out on cross-sectoral considerations such as ministries, prosecutors' offices, and judicial institutions.

The aspect of cooperation in the surrender of fugitives is more obvious in the mechanism that runs in the extradition agreement, because there is cooperation between institutions and does not only involve 1 (one) institution. However, the existence of cooperation does not mean that there is a morality of cooperation. The extradition process is known to have a long and convoluted process so that this

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<sup>38</sup> Jean Piaget, *The Moral Judgement of the Child* (The Free Press, t.t.), p. 195.

<sup>39</sup> Piaget, *The Moral Judgement of the Child*, p. 196.

<sup>40</sup> Serdar San, "Transnational Policing between National Political Regimes and Human Rights Norms: The Case of the Interpol Red Notice System," *Theoretical Criminology* 26, no. 4 (2022): 601–19, <https://doi.org/10.1177/13624806221105280>.

mechanism does not always show the spirit of cooperation because there is still a sectoral ego held by law enforcement officials.<sup>41</sup> The same issue was also found by Apriani, et. al. who found that regulatory reform is needed to resolve the issue of sectoral ego in the extradition process.<sup>42</sup>

### C. Relevance of the Extradition Treaty and P to P

In the end, it is undeniable that the extradition mechanism and P to P are two different things even though their presence goes hand in hand and is in line for the same purpose. Both mechanisms have been described and analyzed using responsive legal parameters as stated by Nonet and Selznick. The differences in the characteristics of the two can be summarized and simplified as follows:

**TABLE 3. Comparison of extradition and P to P according to responsive law**

Parameters	Extradition	P to P
Legal Purpose	Fulfilling the purpose of surrendering fugitives with a mechanism with less arbitrary space	Fulfilling the purpose of surrendering fugitives with mechanisms that are vulnerable to arbitrariness
Legitimacy	Provide substantive justice enforcement space with standardized and binding procedures	Less space for substantive justice enforcement due to non-standardized

<sup>41</sup> Maringka, *Ekstradisi dalam Sistem Peradilan Pidana*, p. ix.

<sup>42</sup> Maria Novita Apriyani et al., "Pembaruan Peraturan Ekstradisi Dan Mutual Legal Assistance Indonesia Dalam Pengembalian Aset Hasil Korupsi Yang Berada Di Luar Negeri," *CREPIDO* 5, no. 1 (2023): 27-41, <https://doi.org/10.14710/crepido.5.1.27-41>.

		procedures with weaker legitimacy
Rules	Achieving the goal of extradition for the state, victims, and perpetrators	Achieving the goals of the state and the victim, but against the perpetrator depends on the law of each jurisdiction involved
Discretion	Have limited discretion	Has a wide discretionary space
Morality	Stronger cross-sector cooperation	Cross-sector cooperation does not occur, only between state police institutions

Based on the results of the comparison, it can be seen that extradition reflects a more responsive legal paradigm compared to P to P. Both have their own positive points. However, the extradition mechanism based on international agreements reflects the progressive legal characteristics and of course legal certainty for all parties involved.

On the other hand, criminal law enforcement certainly requires flexibility to a certain extent. So pragmatically, law enforcement officials, especially the police, will certainly prefer the P to P mechanism. P to P is clearly much simpler than extradition which requires the need to deploy a lot of energy with a long bureaucracy.

Thus, based on progressive legal theory, extradition treaties remain relevant with a solid foundation. In terms of achieving legal objectives, legitimacy, and morality, the implementation of extradition based on the treaty is much stronger than the P to P mechanism. Although, the P to P mechanism also has its own legitimacy and attractiveness, especially for cases that require flexibility and a high level of pragmatism, and if it is related to countries that do not yet have an extradition treaty with Indonesia.

## Conclusion

Nonet and Selznick have provided the parameters that characterize responsive law. Through the parameters that have been reworked, the extradition treaty can be said to have fulfilled the aspects of legal objectives, legitimacy, rules, and morality. Meanwhile, P to P cooperation fulfills the aspects of legal objectives and discretion. Thus, extradition agreements meet the characteristics of a responsive legal system more than P to P cooperation.

Based on the description above, it can also be seen that the extradition agreement and P to P cooperation have their own attractions and problems. In general, the issue that encompasses both mechanisms is the battle between usefulness and certainty as well as the protection of rights and efficiency. Extradition treaties provide a guarantee of certainty with a binding legal basis and detailed procedures, but the P to P mechanism provides greater benefits through a wide range of motion. On the other hand, extradition agreements take time, effort, and bureaucracy long but with a clear guarantee of rights protection, while P to P cooperation requires a short time and lighter effort despite the potential for abuse in it. In short, the extradition mechanism under international treaties is the means used under ideal conditions to repatriate the perpetrators of criminal acts. However, the P to P mechanism can, and may even be necessary, used in cases where flexibility is needed that is not provided by the extradition treaty, and when there is no extradition treaty binding Indonesia with other relevant countries.

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