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Statutory Rules 1994 No. *L1*

4141 /

Extradition (Republic of Indonesia) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Extradition Act 1988*.

Dated *L* 1994.

20 December /

L BILL HAYDEN /
Governor-General

By His Excellency's Command,

L
Attorney-General

M. LAVARCH /

Citation

1. These Regulations may be cited as the Extradition (Republic of Indonesia) Regulations.

Commencement

2. These Regulations commence on 21 January 1995.

Interpretation

3. (1) In these Regulations, unless the contrary intention appears:
“the Act” means the *Extradition Act 1988*.

Declaration of Republic of Indonesia as extradition country

4. The Republic of Indonesia is declared to be an extradition country.

Application of Act

5. The Act applies in relation to the Republic of Indonesia subject to the Extradition Treaty between Australia and the Republic of Indonesia done at Jakarta on 22 April 1992 (being the treaty a copy of the English text of which is set out in the Schedule).

SCHEDULE

**EXTRADITION TREATY BETWEEN
AUSTRALIA AND THE REPUBLIC OF INDONESIA**

AUSTRALIA AND THE REPUBLIC OF INDONESIA,

DESIRING to make more effective the cooperation of the two countries in the repression of crime and specifically, to regulate and thereby promote the relations between them in matters of extradition,

HAVE AGREED AS FOLLOWS:

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Article 1
Obligation to Extradite

1. Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

2. If the offence for which extradition is requested has been committed outside the territory of the Requesting State, extradition shall be granted subject to the provisions of this Treaty, if the person whose extradition is requested is a national of the Requesting State. If the person whose extradition is requested in respect of such an offence is not a national of the Requesting State, the Requested State may, in its discretion, grant extradition.

Article 2
Extraditable Offences

1. Persons shall be extradited according to the provisions of this Treaty for any act or omission constituting any of the following offences provided the offence is punishable by the laws of both Contracting States by a term of imprisonment of not less than one year or by a more severe penalty:

- (1) wilful murder, murder;
- (2) manslaughter;
- (3) an offence against the law relating to abortion;
- (4) aiding or abetting or counselling or procuring the commission of suicide;
- (5) maliciously or wilfully wounding or inflicting grievous bodily harm, assault occasioning actual bodily harm;
- (6) assaulting a Magistrate, a police officer or a public officer;

SCHEDULE—continued

- (7) assault on board a ship or aircraft with intent to destroy life or cause grievous bodily harm;
- (8) rape or sexual assault;
- (9) indecent assault;
- (10) procuring, or trafficking in, women and young persons for immoral purposes; living on the earnings of prostitution; any other offence against the law relating to prostitution;
- (11) bigamy;
- (12) kidnapping; abduction; false imprisonment; dealing in slaves;
- (13) stealing, abandoning, exposing, or unlawfully detaining a child;
- (14) an offence against the law relating to bribery;
- (15) perjury; subornation of perjury; obstructing or defeating the course of justice;
- (16) arson;
- (17) an offence relating to counterfeiting;
- (18) an offence against the law relating to forgery or against the law relating to uttering what is forged;
- (19) an offence against the law relating to taxation, customs duties, foreign exchange control or other revenue matters;
- (20) stealing; embezzlement; fraudulent conversion; fraudulent false accounting; obtaining property, money, valuable securities or credit by false pretences or other form of deception; receiving stolen property, any offence involving fraud;

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SCHEDULE—continued

- (21) burglary; housebreaking; any similar offence;
- (22) robbery;
- (23) blackmail or extortion by means of threats or by abuse of authority;
- (24) an offence against the law relating to bankruptcy and insolvency;
- (25) an offence against the law relating to companies;
- (26) maliciously or wilfully damaging property;
- (27) an act done with the intention of endangering the safety of persons travelling on a railway, vehicle, ship, or aircraft or of endangering or damaging a railway, vehicle, ship or aircraft;
- (28) piracy;
- (29) an unlawful act against the authority of the master of a ship or the commander of an aircraft;
- (30) the unlawful seizure, or unlawful exercise of control, of a ship or aircraft, by force or threat of force or by any other form of intimidation;
- (31) an unlawful act of any of the kinds specified in paragraph 1 of Article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- (32) an offence against the law relating to dangerous drugs or narcotics; or
- (33) aiding, abetting, counselling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit, an offence described in a preceding item.

SCHEDULE—continued

2. Extradition may also be granted at the discretion of the Requested State for any other act or omission constituting an offence if the offence, according to the laws of both Contracting States, is one for which extradition can be granted.
3. For the purpose of this Article in determining whether an offence is an offence against the law of both Contracting States:
 - (a) it shall not matter whether the laws of the Contracting States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;
 - (b) the totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account and it shall not matter whether, under the laws of the Contracting States, the constituent elements of the offence differ.
4. Extradition may be granted pursuant to the provisions of this Treaty irrespective of when the offence in relation to which extradition is requested was committed provided that if the offence was committed before this Treaty enters into force it was at the time an offence against the laws of both Contracting States.

Article 3
Territorial Application

1. A reference in this Treaty to the territory of a Contracting State means:
 - (a) the territory under the sovereignty of a Contracting State and the adjacent seas over which that Contracting State exercises sovereignty consistent with the 1982 United Nations Convention on the Law of the Sea;
 - (b) other adjacent seas and the continental shelf over which that Contracting State exercises sovereign rights or other rights in accordance with the 1982 United Nations Convention on the Law of the Sea, but only in relation to the exercise of those sovereign rights or other rights;

SCHEDULE—continued

(c) vessels and aircraft owned by or registered in a Contracting State if any such vessel is on the high seas or if any such aircraft is in flight when the act or omission constituting the offence for which extradition is requested takes place.

2. For the purposes of this Treaty, an aircraft shall be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation.

*Article 4
Political Offences*

1. A person shall not be extradited if the offence for which his extradition is requested is a political offence, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of political character.

2. If any question arises as to whether a case is a political offence or an offence of a political character, the decision of the authorities of the Requested State shall be determinative.

3. The taking or attempted taking of the life of any Head of State or any Head of Government or of a member of his or her family shall not be deemed to be a political offence or an offence of a political character for the purpose of this Treaty.

*Article 5
Extradition of Nationals*

1. Each Contracting State shall have the right to refuse extradition of its nationals.

2. If the Requested State does not extradite its nationals, that State shall at the request of the Requesting State submit the case to the competent authorities of the former for prosecution. For this purpose the files, information and exhibits relating to the offence shall be surrendered by the Requesting State to the Requested State.

SCHEDULE—continued

3. Notwithstanding paragraph 2 of this Article, the Requested State shall not be required to submit the case to its competent authorities for prosecution if the authorities have no jurisdiction. If it does not have jurisdiction the Requested State shall extradite the person.

Article 6
Double Jeopardy

Extradition of a person shall not be granted when he has already been tried and discharged or acquitted by a competent tribunal, or has already undergone punishment in the Requested State or in a third State for the act or omission constituting the offence for which his extradition is requested.

Article 7
Death Penalty

Extradition shall not be granted if the offence with which the person sought is charged or of which he is convicted, or for which he may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the Requesting State unless that State undertakes that the death penalty will not be imposed or, if imposed, will not be carried out.

Article 8
Rule of Speciality

1. Subject to paragraph 3 of this Article a person extradited under this Treaty shall not :

- (a) be detained or tried, or be subject to any other restriction of his personal liberty, in the territory of the Requesting State for any offence committed before his extradition other than an offence for which the extradition was granted or any other offence described in Article 2 in respect of which the Requested State consents to his being so detained, tried or subjected to a restriction of his personal liberty; or

SCHEDULE—continued

- (b) be detained in the Requesting State for the purpose of his being extradited to a third State for an offence committed before his surrender unless the Requested State consents to his being so detained.

2. A request for the consent of the Requested State under this Article shall be accompanied by a copy of any statement made by the extradited person in respect of the offence concerned and by the documents mentioned in subparagraphs (a), (e) and (f) of paragraph 2 of Article 11 in respect of the offence concerned.

3. Paragraph 1 of this Article does not apply if the person has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was extradited or if the person has returned to the territory of the Requesting State after leaving it.

*Article 9
Exceptions to Extradition*

1. Extradition shall not be granted in any of the following circumstances:

- (a) where the person sought has acquired exemption from prosecution or punishment by reason of lapse of time or other lawful cause according to the law of either Contracting State in respect of the act or omission constituting the offence for which extradition is requested;
- (b) where the act or omission constituting the offence for which extradition is requested is of a kind that, under the law of the Requested State, constitutes an offence only against military law;
- (c) where the person whose extradition is requested is liable to be tried by a court or tribunal that is especially established for the purpose of trying his case or is only occasionally, or under exceptional circumstances, authorised to try such cases or his extradition is requested for the purpose of his serving a sentence imposed by such a court or tribunal;

SCHEDULE—continued

- (d) where the Requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinions; or
 - (e) where the Requested State has substantial reasons for believing that the person whose extradition is requested will be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
2. Extradition may be refused in any of the following circumstances:
- (a) where an investigation is in progress or a prosecution is pending in the Requested State in respect of the offence for which the extradition of the person is requested;
 - (b) where the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is requested, the extradition of that person would be unjust, oppressive or incompatible with humanitarian considerations;
 - (c) in the case of a person convicted and sentenced in respect of an offence, less than six months of the sentence of imprisonment or any other form of deprivation of liberty imposed in the Requesting State for the offence for which extradition is requested remains to be served, taking into account the serious nature of the offence;
 - (d) if the competent authorities of the Requested State have decided in the public interest to refrain from prosecuting the person for the offence in respect of which extradition is requested; or
 - (e) where the offence for which extradition is requested is regarded under the law of the Requested State as having been committed in whole or in part within that State.

SCHEDULE—continued

Article 10
Provisional Arrest

1. In case of urgency a Contracting State may apply by means of the facilities of the International Criminal Police Organization for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel.
2. The application shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence of one of the documents mentioned in paragraph 2 of Article 11 authorising the apprehension of the person, a statement of the punishment that can be imposed or has been imposed for the offence and, if requested by the Requested State, a concise statement of the acts or omissions alleged to constitute the offence.
3. On receipt of such an application the Requested State shall take the necessary steps to secure the arrest of the person sought and the Requesting State shall be promptly notified of the result of its request.
4. A person arrested upon such an application may be set at liberty upon the expiration of 45 days from the date of his arrest if a request for his extradition accompanied by the documents specified in Article 11 has not been received.
5. Paragraph 4 of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

Article 11
Extradition Procedure and Required Documents

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 13.

SCHEDULE—continued

2. The request for extradition shall be accompanied:
 - (a) if the person is accused of an offence—by a warrant for the arrest or a copy of the warrant for arrest of the person, a statement of each offence for which extradition is sought and a statement of the acts or omissions which are alleged against the person in respect of each offence;
 - (b) if a person has been convicted in his absence of an offence—by a judicial or other document, or a copy thereof, authorising the apprehension of the person, a statement of each offence for which extradition is sought and a statement of the acts or omissions which are alleged against the person in respect of each offence;
 - (c) if the person has been convicted of an offence otherwise than in his absence—by such documents as provide evidence of the conviction and the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out;
 - (d) if the person has been convicted of an offence otherwise than in his absence but no sentence has been imposed—by such documents as provide evidence of the conviction and a statement affirming that it is intended to impose a sentence;
 - (e) in all cases—by the text of the relevant provision of the law, if any, creating the offence or a statement of the relevant law as to the offence including any law relating to the limitation of proceedings, as the case may be, and in either case, a statement of the punishment that can be imposed for the offence; and
 - (f) in all cases—by as accurate a description as possible of the person sought together with any other information which may help to establish his identity and nationality.

3. To the extent permitted by the law of the Requested State, extradition may be granted of a person pursuant to the provisions of this Treaty notwithstanding that the requirements of paragraph 1 and paragraph 2 of this Article have not been complied with provided that the person sought consents to an order for his extradition being made.

SCHEDULE—continued

4. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the Requested State.

*Article 12
Additional Information*

1. If the Requested State considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted that State may request that additional information be furnished within such time as it specifies.

2. If the person whose extradition is sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting State from making a fresh request for the extradition of the person.

3. Where the person is released from custody in accordance with paragraph 2 of this Article the Requested State shall notify the Requesting State as soon as practicable.

*Article 13
Authentication of Documents*

1. A document that is furnished in support of a request for extradition shall be admitted, if authenticated, in any extradition proceedings in the Requested State.

2. A document is authenticated for the purpose of this Treaty, if:

- (a) it purports to be signed or certified by a Judge, Magistrate or other competent authority in or of the Requesting State; and
- (b) it is sealed with the official seal of the Requesting State or of a Minister of State, or of a Department or Ministry of the Requesting State.

SCHEDULE—continued

Article 14
Surrender

1. The Requested State shall as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State through the diplomatic channel.
2. If the request is agreed to, the Requesting State shall be informed of the place and date of surrender.
3. Subject to paragraph 4 of this Article the Requesting State shall remove the person from the Requested State within such reasonable period as the Requested State specifies and if the person is not removed within that period the Requested State may refuse extradition for the same offence.
4. If circumstances beyond its control prevent a Contracting State from surrendering or removing the person to be extradited, it shall notify the other State. The two States shall decide on a new date for surrender and the provisions of paragraphs 2 and 3 of this Article shall apply.

Article 15
Postponement of Surrender

The Requested State may postpone the surrender of a person in order to proceed against him, or so that he may serve a sentence for an offence other than an offence constituted by an act or omission for which extradition is requested and, where the Requested State so postpones the surrender, it shall advise the Requesting State accordingly.

Article 16
Handing over of Property

1. When the extradition of a person is granted, the Requested State shall, in so far as its law permits and subject to the rights of third parties, at the request of the Requesting State, seize and hand over property:
 - (a) which may serve as proof of the offence; or
 - (b) which has been acquired as a result of the offence.

SCHEDULE—continued

2. The property mentioned in paragraph 1 of this Article may be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person sought.

3. If the property in question is liable to seizure or confiscation in the territory of the Requested State that State may, in connection with pending proceedings, temporarily retain it or hand it over on condition that it is returned.

4. Any rights which the Requested State or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State as soon as possible after the trial if that State so requests.

*Article 17
Multiple Requests*

1. Where requests are received from two or more States for the extradition of the same person either for the same offence, or for different offences, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting State of its decision.

2. In determining to which State a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:

- (a) if the requests relate to different offences, the relative seriousness of the offences;
- (b) the time and place of commission of each offence;
- (c) the respective dates of the requests;
- (d) the nationality of the person;
- (e) the ordinary place of residence of the person; and
- (f) the possibility of subsequent extradition to another State.

*Article 18
Transit*

1. Where a person is to be extradited for an offence by a third State to a Contracting State through the territory of the other Contracting State, the first mentioned Contracting State shall request

SCHEDULE—continued

the other Contracting State to permit the transit of that person through its territory.

2. Upon receipt of such a request, the Requested State shall grant the request unless there are reasonable grounds for refusing to do so.

3. Permission for the transit of a person shall, subject to the law of the Requested State, include permission for the person to be held in custody during transit.

4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting State in whose territory the person is being held may direct that the person be released if his transportation is not continued within a reasonable time.

5. The Contracting State to which the person is being extradited shall reimburse the other Contracting State for any expense incurred by that other Contracting State in connection with the transit.

Article 19
Expenses

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interest of the Requesting State.

2. The Requested State shall bear the expenses incurred in its territory in the arrest of the person whose extradition is requested, and in the maintenance in custody of the person until he is surrendered to a person nominated by the Requesting State.

3. The Requesting State shall bear the expenses incurred in conveying the person from the territory of the Requested State.

Article 20
Amendments

This Treaty may be amended by agreement in writing between the Contracting States.

SCHEDULE—continued

Article 21
Entry into Force and Termination

1. This Treaty shall enter into force thirty days after the date on which the Contracting States have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

DONE in duplicate at Jakarta on the Twenty-second day of April 1992 in the English and Indonesian languages, each text being equally authentic.

FOR AUSTRALIA

FOR THE REPUBLIC OF
INDONESIA

PHILIP FLOOD

ALI ALATAS

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on

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1994.

30 December