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Extradition: promises and pitfalls

Indonesia and Singapore finally agreed an extradition treaty on April 27, a deal which could see hundreds of fugitive bankers and their billions of dollars in ill-gotten gains delivered back to Jakarta. But while the signing represents an important step in recovering the huge sums Indonesians have stashed in Singapore banks, there are several reasons why the treaty could be less effective than many may expect.

Diplomats from both sides of the water are remaining tight-lipped on what finally led to the treaty's signing after more than 30 years of negotiations. It is thought that Singapore came to the negotiating table wanting closer military ties with Indonesia in return for the agreement on extraditions. However, many observers believe that it was economic concerns – in the form of an Indonesian ban on vital sand exports to Singapore – that proved the critical factor.

Whatever the motivations were, the treaty now opens the way for Indonesia to bring to justice the many fugitives currently living in Singapore. With billions of dollars at stake, President Yudhoyono has already indicated the government is preparing proceedings against 20 major debtors (eight of the worst who are detailed in Table One).

Table One: A Selection of Indonesian fugitives in Singapore

Fugitive/ debtor	Status	Institute	Total money owed to Indonesia
Bambang Sutrisno and Adrian Kiki Ariawan	Guilty of embezzlement	Bank Surya	US\$162 million
Sudjiono Timan	Guilty of embezzlement	State-owned investment company PT Bahana Pembinaan Usaha Indonesia	\$120 million
Lidia Mochtar	Guilty of embezzlement	Bank Tamara	\$120 million
Pauline Maria Lumowa	Wanted to answer charges	Bank BNI	\$184 million
Agus Anwar	Suspect for embezzlement	Bank Pelita	\$214 million
Sjamsul Nursalim	Wanted to answer charges	Bank BDNI	Uncertain, - could be up to Rp 37 trillion
Samadikun Hartono	Guilty of embezzlement	Bank Modern	Rp 169 billion
Raja Garuda Mas head Sukanto	Problem loans	To several national banks including \$500 million to Bank Mandiri	US\$1.4 billion

But despite the deal's inking, there is no certainty that the money or the suspects will be brought back to Indonesia any time soon. The foremost concern is that the treaty could be thrown out by one of the two nations' parliaments, both of which must ratify it into law. Approving the deal is unlikely to be a problem in Singapore's government-dominated legislature. However, it could easily be derailed by a nationalist lobby in the Indonesian House of Representatives (DPR).

The greatest threat to the treaty in the DPR is the military agreement signed in tandem with the extradition legislation. The new defence rules will allow Singaporean and Indonesian forces to train together with third parties on Indonesian soil, a move that has already been opposed by some

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conservative legislators who worry that Jakarta is giving away too many of its sovereign rights.

Even if this issue is resolved and lawmakers expedite the passage of these two agreements, the legislative process could easily take months, if not years.

It is such delays that Indonesian prosecutors fear will give the nation's most-wanted criminals ample time to escape the island or stash their fortunes before proceedings against them begin. This will certainly be the case if their assets are not carefully tracked and frozen by the Singaporean authorities. As yet, it is by no means certain that this will happen especially given that banking deals in Singapore are often shrouded in secrecy.

Rather than fleeing the country, the other possibility is that well-heeled fugitives will opt to stay and fight extradition proceedings. With plenty of money at their disposal it seems likely that their lawyers could keep their cases tied up in the courts for years.

International experience shows that extradition proceedings are problematic under the best of circumstances. For example, a disgraced former head of the scandal-ridden Bank Bumiputra in Malaysia, Lorraine Esme Osman, fought off extradition from Britain to Malaysia for almost 10 years. This shows how long extradition can take even when two countries share a common legal system. Whereas the roots of Malaysia and Britain's legal systems are similar because of their colonial ties, Singapore and Indonesia's are very different.

One Indonesian case, often held up as an extradition success story, is another example of how difficult it can be for the authorities to get their man. Indonesian property tycoon Hendra Rahardja first absconded to Australia in late 1998 after a string of his banks collapsed, owing creditors millions of dollars. When Indonesia and Australia signed an extradition treaty in early 1999, Rahardja was immediately taken into custody by the Australian Federal Police.

While Rahardja's arrest came quickly, it took more than four years to complete the extradition process and the suspect died in early 2003, just before he was about to be deported home. In August 2004, the Australian government finally surrendered just A\$700,000 of the debtor's money to Indonesia, a tiny fraction of the US\$200 million he was believed to have stolen.

A further potential drag on the effective implementation of the treaty is the state of Indonesia's corruption-riddled legal sector. The complex nature of these white collar crimes means that Indonesian prosecutors will have to work overtime if their extradition requests are to stand up to the rigorous scrutiny of Singapore's judges.

While Singapore's judicial system is considered to be one of the cleanest in Asia, this is not so of Indonesian law enforcement, which can be compromised at every level of an investigation. It is a fairly common practice for Indonesian suspects to pay prosecutors to create legally flawed cases against them, dooming the course of justice from the outset. Without proper government oversight, Singaporean-based fugitives easily could do the same thing.

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It is clear that if its efforts are to succeed, Jakarta will have to hire clean, well-trained prosecutors to take on extradition cases. In this respect President Yudhoyono is already sending out the right message, by announcing that the powerful Indonesian Corruption Eradication Commission (KPK) will lead this legal charge. But KPK prosecutors will also have to be backed up with proper funding and a genuine government commitment to bringing fugitives to justice.

By signing the treaty, Singapore has finally acknowledged its responsibility in the war against Indonesian corruption, the source of so much of its neighbour's problems. However, if the agreement is not implemented seriously by both parties this important symbolic step will remain just that.

Human rights nil, intolerance 1

The Supreme Court's decision is out for an Indonesian housewife and it does not bode well for efforts to protect human rights in the country.

Almost exactly a year ago, Lilis Maemudah was the innocent victim of a sharia-inspired regulation issued by her local government in Tangerang. Waiting at a bus-stop one night after working a part-time job, Lilis was arrested on suspicion of soliciting and was later processed and fined by a district court judge.

Aimed at reducing vice in the area, the bylaw made it possible for police to arrest women for prostitution for simply being out alone at night. The regulation was part of a package of decrees based on a fundamentalist interpretation of Islamic law, which also included stricter controls on alcohol, a ban on all public displays of affection and an obligation for local government employees to wear Muslim dress on Fridays.

Refusing to be cowed by the humiliating conviction, Lilis teamed up with the Advocates Against Bylaw Discrimination (KANTIF) to take the local regulation to the Supreme Court. Their case rested on the regulation's contravention of several higher laws, including those in the Criminal Code. Lawyers argued that arresting people without evidence breached specific clauses within the code that protect suspects' rights to a fair trial.

On April 13 this year, the court finally issued a ruling on the regulation. Lilis and KANTIF had lost, and the regulation stood.

In some ways the significance of the court's decision for women like Lilis has been diluted by the typically lax implementation of regulations in this country. According to Dedi, a member of KANTIF, the regulation is rarely enforced these days after it became a political hot potato for the Tangerang administration.

However, Dedi also notes that a successful outcome at the court would have set an important precedent for other restrictive sharia-style bylaws passed in the country. "If the Supreme Court had found in our favour, people who felt aggrieved by similar local regulations in other areas of Indonesia could have held it up as an example to fight them with," Dedi said.