Implementation of Death Penalty Crime:  
Dilemma between the Nationality Principle and Human Rights  

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Abstract  

Extradition and prosecution are cornerstones of international law cooperation’s enforcement to prevent immunity from criminal responsibility, especially regarding the refusal to extradite nationals. The principle’s implementation in its development is influenced by the trend from abolitionist countries to refuse the requests for Mutual Legal Assistance in criminal matters (MLA) related to death penalty crimes. Guarantees from requesting the state not to impose death penalty sentences needs to implement nationality jurisdiction if the state refuses to extradite its citizens to another country. Countries that impose death penalty demonstrate that the nationality principle is very successful in investigating crimes committed abroad, whereas countries that have abolished the death penalty consider the nationality principle to be a violation of human rights. This paper focuses its discussion on the usefulness of Article 8 paragraph (5) of the Criminal Code Draft, which regulates the exceptional nature of the death penalty in the nationality principle’s implementation. This paper concludes that the exceptional nature of the death penalty in nationality principles' implementation is regulated in Article 8 paragraph (5) of the Criminal Code Draft.
Article elaborates that a country of hindered crime could prevent MLA requests from Indonesia related to death penalty crimes based on its international obligations and the perspective of human right. This research uses a normative approach and pragmatic-descriptive analysis.

A. Introduction

Jurisdiction is usually closely related to the territorial boundaries of a country. Sovereignty gives the state the authority to prescribe, adjudicate, and enforce positive law against all people within its territorial boundaries. As a logical consequence, state sovereignty ends where the sovereignty of other countries begins. The territorial principle is the most powerful and internationally recognized basis for applying jurisdiction. The concept of a modern state laid down by the Treaty of Westphalia in 1648 places sovereignty, jurisdiction and territorial territory as a triangular building that supports each other and cannot be separated. By dividing the world into compartments where each country has jurisdiction according to the boundaries of its sovereign territory, the potential for overlapping jurisdiction to adjudicate between two or more countries can be avoided due to the application of jurisdiction that extends beyond its territorial boundaries.

According to Grotius, even though the state has to show hospitality by accepting every foreigner entering its territory (law of hospitality), it cannot protect criminals. In that condition, he must hand the person over to the state, which has the authority to punish him or punish him according to its law (aut dedure aut punire). However, the development of crime that does not recognize state boundaries shows that it raises awareness of countries to cooperate in ensuring that criminals cannot be separated from the obligation to account for their actions wherever they are. In international law, the adage is then modified into aut dedure aut judicare or the principle of surrendering or adjudicating (extradite or prosecute).

The need for countries to cooperate with each other in eradicating crime in practice gives rise to various foundations for the application of extraterritorial jurisdiction, one of which is the application of jurisdiction based on citizenship or known as the active national principle. This principle has an important role in ensuring that criminals who after committing crimes in other countries then seek protection by returning to their home countries cannot be separated from

2 Mann Frederick A., The Doctrine of Jurisdiction in International Law, 111 Recueil Des Cours 1, 30 (1964-I)
3 Ibid.
the obligation to account for their actions. Although the internationally recognized custom recognizes the right of the country of origin to refuse to hand over its citizens to another country requesting their surrender (non-extradite of national), on the contrary, it is obligated to try it based on its own law. Based on this description, the application of the active national principle contains the function of state protection for its citizens. Foreign law does not provide the legal awareness of their native nation. The reason is that a person will benefit more if he is judged based on their nation's law rather than another country.

Indonesia still maintains the death penalty in effect. However, the state's interest in protecting its citizens becomes more complex when active national jurisdiction is applied in Indonesia. Even though a person commits a crime in a country that does not acknowledge the death penalty, a person will still be imposed with the death penalty if they are tried in a country that implements the death penalty. Therefore, there is a possibility that countries that do not support the death penalty will refuse to cooperate with Indonesia in submitting the evidence during the trial, considering those evidence will impose the death penalty.

A crime is punishable by the death penalty. The principle stipulates that a country cannot impose the death penalty is not regulated by law. The problem's complexity illustrated in Article 8 paragraph (5) of the Draft Criminal Code is related to the exceptional nature of the death penalty nationality principles implementation. This paper will focus its discussion on the provisions regarding nationality principle's implementation in positive law in Indonesia. Furthermore, the paper will specifically highlight the implementation's effectiveness on extradition and Mutual Legal Assistance in Criminal Matters (MLA) concerning Indonesia as a country that legally applies the death penalty. The questions raised in this paper are (1) the philosophical foundation in the nationality principle seen from the aspect of protecting Indonesian who commit criminal acts abroad, (2) the effectiveness of the nationality principle’s implementation by Indonesia from the extradition practice’s aspect and MLA based on human rights, and (3) the exceptional nature of death penalty regarding nationality principle's implementation in the draft criminal code. The novelty of the research is to understand the perspective of national principle’s as a philosophical foundation, especially in the punishment implementation. Moreover, it will also elaborate Indonesia’s position who is an active death penalty applicator,

6 Budiarto M., 1981, Ekstradisi Dalam Hukum Nasional, Jakarta: Ghalia Indonesia
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considering the national principle’s effectiveness. This research uses a normative approach and pragmatic-descriptive analysis.

B. Discussion

1. The Philosophical Foundation in the Nationality Principle Seen from the Aspect of Protecting Indonesian who Commit Criminal Acts Abroad

The history of world civilization shows that long before the development of feudalism, characterized by the division of power based on territorial boundaries, the ancient Egyptians, Babylonians, Greeks and Romans had implemented forms of extraterritorial jurisdiction which today are similar to the application of nationality principles. The application of jurisdiction based on citizenship in Roman law applies as protection for all Roman citizens wherever they are. According to Cicero, the phrase “I am a Roman citizen (civis romanus sum)” no longer has the meaning of protection wherever they go. The state deprives its citizens of the freedom to travel outside the Roman territory, where they are treated as foreigners and do not always find someone to guarantee their safety.

The development of international law that upholds equality between sovereign states causes the current nationality personality principle not to be applied absolutely. The country of origin of the citizenship cannot immediately intervene or question the authority of the local state to try its citizens who violate the law in that country, considering that such actions are considered to interfere with the sovereignty of the country concerned. It is also not uncommon to expect that the country where the crime took place will hand over the suspect or accused foreign nationals to their home country, considering that in this way, they will lose their sovereignty over their laws. However, developments in international law indicate the need to apply nationality national principles in ensuring that criminals who seek protection by returning to their home countries cannot be separated from the obligation to account for their actions after committing crimes in other countries. In this context, the right of the country of origin to refuse to hand over its citizens to other countries as a form of state protection has implications for the emergence of an obligation to prosecute them based on their law.

The application of jurisdiction based on the nationality national principle assumes that state sovereignty remains with its citizens wherever they go. Thus, when a citizen violates the law in another country, he has violated two

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9 Hooge Nicholas T., 2010, Responsibility To Protect (R2P) As Duty To Protect? Reassessing The Traditional Doctrine Of Diplomatic Protection In Light Of Modern Developments In International Law, University of Toronto, Pg. 6
10 Budiarto M., 1981, Ekstradisi Dalam Hukum Nasional, Jakarta: Ghalia Indonesia 196
laws at the same time, namely the law of the local state, namely the law of the local country and the law of his nation.\textsuperscript{11} The double criminality principle shows that good and evil are universal values found through reason by every nation. These universal values require states to cooperate to ensure that the perpetrators of crimes cannot be separated from accountability for their actions wherever they are. This is stated in principle to extradite or to persecute, which is a modification of the adage aut de dure aut punire put forward by Grotius.\textsuperscript{12} Based on the history mentioned above, it is clear that the philosophical foundation contained nationality principle's implementation aims to balance the country of origin's right to protect their citizen and every civilized country to ensure these crimes are taken to legal accountability.

The protection function contained in the nationality principle elaborates that a person will benefit more if he is judged based on the law of his nation rather than the law of another country. The reason is that other countries' laws are foreign and do not follow the person's native nation's legal awareness. A foreign citizen being tried by another country is weak to defend the actions he is accused of. Lack of understanding of the legal system in the local country and their rights as a suspect or defendant, barriers to mastery of the local language and limited access to collect evidence that can relieve themselves make foreign nationals vulnerable to arbitrariness in the criminal justice process.\textsuperscript{13} In such a condition, the internationally recognized custom recognizes the right of the country of origin to refuse to surrender its nationals and to try the person based on its law, which is deemed more profitable for him.

2. Effectiveness of the Nationality Principle’s Implementation by Indonesia from the Extradition Practice’s Aspect and MLA Based on Human Rights

Although international law does not prohibit the death penalty, the majority of countries regard it as a violation of human rights. Since 1976, countries have abolished the death penalty’s implementation. However, this becomes an issue when the perpetrator comes from a country that still acknowledges death penalty and requests MLA based on the nationality principle. Indonesia is one of the countries that still regulates death penalty. Moreover, the nationality principle's implementation in Indonesia is regulated in Article 5 paragraph (1) point 2 of the Criminal Code. This regulation describes Indonesian criminal law that can be applied to Indonesian citizens who commit criminal acts abroad if the act is a crime according to Indonesian

\textsuperscript{11} Fey-Constance Blaas, 2003, Double Criminality In International Extradition Law, University of Stellenbosch, Stellenbosch, South Africa.


law. In Indonesia, MLA has its fair share in assisting investigation, prosecution, and examination in court in accordance with the state’s provision and regulation requested. This nationality principle aligns with not surrendering Indonesian citizens requested for extradition by other countries as regulated in Article 7 of Law Number 1 of 1979 on Extradition. The prosecution must follow the principle of refusal of extradition in Indonesia, which is implied from the provisions of Article 7 paragraph (2), namely if it is more advantageous if he is tried in a country requesting extradition, the refusal extradition against an Indonesian citizen can deviate. In its development, provisions regarding obligations to extradite or to prosecute regulated in extradition treaties between Indonesia and various countries, as follows:

<table>
<thead>
<tr>
<th>Countries</th>
<th>Extradition Treaty Signing Date</th>
<th>Ratification</th>
<th>Articles regarding Obligations to Extradite or Prosecute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia-Australia</td>
<td>April 22, 1992</td>
<td>Law No. 8/1994</td>
<td>Article 5 Paragraph (2)</td>
</tr>
<tr>
<td>Indonesia-Filipina</td>
<td>February 10, 1976</td>
<td>Law No. 10/1976</td>
<td>Article 6B</td>
</tr>
<tr>
<td>Indonesia-Hong Kong</td>
<td>May 5, 1997</td>
<td>Law No. 1/2001</td>
<td>Article 4 Paragraph (2)</td>
</tr>
<tr>
<td>Indonesia-India</td>
<td>January 25, 2011</td>
<td>Law No. 13/2014</td>
<td>Article 4 Paragraph (2)</td>
</tr>
<tr>
<td>Indonesia-Vietnam</td>
<td>June 27, 2013</td>
<td>Law No. 5/2015</td>
<td>Article 4 Paragraph (2)</td>
</tr>
<tr>
<td>Indonesia-Papua Nugini</td>
<td>June 17, 2013</td>
<td>Law No. 6/2015</td>
<td>Article 4 Paragraph (2)</td>
</tr>
</tbody>
</table>

The case of Harnoko Dewantono as known as OKI is one of the famous cases related to the nationality principles' implementation in Indonesia. Harnoko Dermawan is accused of the murder of Gina Sutan Anwar (Indonesian Citizen, 28 years old), Eri Triharto Darmawan (Indonesian Citizen, 26 years old), and Suresh Michandani (Indian Citizen, 45 years old)

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14 The national principles implementation to criminal acts is limited in 5 paragraph (1) point 1 of the Criminal Code. However, this regulation is not discussed in this paper, considering the use that aims to bind Indonesian citizens to the state's obligation attached is as a resident and citizen, not for the sake of Indonesian citizens' protection.


in the United States. On August 10, 1994, this incident began when three bodies were found in a warehouse rented by Self Storage Rooms U-Haul in Northridge, Los Angeles, the United States. A month later, the deceased is identified as Gina Sutan Anwar, Eri Triharto Darmawan and Suresh Michandani. On January 3, 1995, the OKI was arrested in Jakarta for forging Eri Triharto Darmawan passport documents.

The prosecution of the crime of murder by Harnoko Dewantoro alias OKI was carried out in Indonesia based on nationality principles. To obtain evidence, most of which was at the crime scene, the National Police Investigator sent his team to the United States to cooperate with the LAPD. Harnoko Dewantoro alias OKI was finally sentenced to death by the Central Jakarta District Court on May 13, 1997. In 2019 he was reported to have obtained parole after the President received his amnesty.17

In addition to Harnoko Dewantono, the application of the nationality principle has also been used in the case of Indonesian Migrant Workers on behalf of Khasanah, who murdered her employer, namely a husband and wife couple namely Chia Ngim Fong (79) and Chin Sek Fah (78) at Flat Bedok Reservoir, Singapore. On June 21, 2017. After briefly fleeing to Indonesia, Khasanah was arrested on June 27 2017, in the Tanjung Jabung Barat-Jambi area and tried in Indonesia using the nationality principle.18 Khasanah was sentenced to life imprisonment by the Central Jakarta District Court, but on appeal, the DKI Jakarta High Court commutes the sentence to twenty years in prison.19

As described in the discussion above, handling cases in Indonesian prosecution based on the nationality principle's implementation depends on the effectiveness of cooperation in Mutual Legal Assistance in Criminal Matters (MLA).20 Most witnesses and evidence support this are in the country where the crime was committed. According to the definition given by UNODC (United Nations Office on Drugs and Crimes), Mutual Legal Assistance in Criminal Matters (MLA) is a process taken by states to seek and provide assistance in obtaining evidence in criminal cases.21 MLA is implemented through agreements either bilaterally, regionally or multilaterally based on reciprocity. Global movement's development to

19 Thestraits.times.com, September 5 2020, Bedok double murder: Killer maid had hitman with stool and stomped on elderly woman repeatedly, https://www.straitstimes.com/singapore/courts-crime/bedok-double-murder-killer-maid-told-indonesian-cops-she-was-unhappy-working
abolish the death penalty as a cruel punishment that contains torture has implications. These implications involve several countries that have abolished the death penalty to refuse requests for extradition and MLA if the assistance impairs the death penalty. In this case, countries that have abolished the death penalty in their criminal law are also considered not to assist or facilitate the death penalty in other countries. Rejection to this assistance is by not granting extradition or providing MLA assistance and a mechanism for cooperation between the Police in investigating criminal cases that can lead to the death penalty against the suspect.  

Initially, the trend of rejection from abolitionist countries only applied to the fulfilment of requests for extradition, namely, if the extradition respondent was asked to surrender based on a criminal offence punishable by the death penalty. At the same time, there was no guarantee from the requesting country that the death penalty would not be imposed or implemented. The refusal to fulfil MLA related to criminal acts punishable by the death penalty rarely occurs at the investigation stage, especially the initial investigation. This is reflected in the Extradition Agreement and Mutual Legal Assistance between the European Union and the United States dated July 15, 2003, which contains a clause on the refusal of extradition because of the criminal act on which the request is based is a criminal offence punishable by the death penalty. Still, it does not contain the same clause for rejecting MLA requests, but its application is considered on a case by case basis.  

The refusal to fulfil extradition related to death penalty criminal acts threatened is illustrated in the European Court of Human Rights (ECtHR) decision in 1989 in Soering v the United Kingdom. In this case, the United Kingdom violated its obligations under Article 3 of the European Human Rights Convention (ECHR) by extraditing Jen Soering (a German Citizen) to the United States despite knowing he would be subjected to mental pressure and torture. Similar decisions were also found in some countries, including "the case of Judge vs Canada in 1998" and "the South Africa in the case of Minister of Home Affairs & Others v. Emmanuel Tsebe & Others in 2012". Essentially these cases showed these countries' actions in submitting the extradition respondent even though they knew that the respondents were at risk of facing the death penalty for their actions. These actions violated the countries' constitution or international obligations, which abolished the death penalty.
Although the application is not too rigid, the awareness to ensure that the information and evidence provided in the MLA framework are not used to prosecute the death penalty has begun to grow, as is the case in implementing extradition. The MLA agreement between the European Union and Japan in 2009 contains provisions that allow the rejection of MLA requests related to criminal acts that are punishable by the death penalty if the refusal is regulated in positive law or bilateral agreements between the requesting country and the requested country.26 A guarantee clause that the information provided through the MLA is not used to impose the death penalty is also included in the European Commission recommendation dated February 5, 2019, regarding the opening of negotiations with the United States Government on cross-border access to electronic evidence.27

One of the jurisprudence related to the obligation of abolitionist countries to reject MLA, which can be used to impose the death penalty, is determined in the British Supreme Court Decision Number [2020] UKSC 10 dated March 25, 2020, in the Elgizouli vs Secretary of State for the Home Department case. Elgizouli sued the British Home Secretary for agreeing to provide information to the United States regarding the actions of his son, Shafee El Sheikh. The latter was detained in the United States because he was suspected of being involved in a terrorist group operating in Syria and causing the killing of American and British citizens.28 However, America rejected Britain’s request for assurances that the evidence presented in the context of the MLA would not be used in the trial that would have sentenced Shafee El Sheikh to death.29

The British Supreme Court, in its decision, stated that the fulfilment of assistance in the context of MLA to the United States, which was carried out without any guarantee that the evidence would not be used to impose the death penalty, was against the law. The British Government is deemed to have violated the 2008 Data Protection Law, which requires the British Government as the data provider to pay attention to the conditions or carry out an assessment to ensure that the information will not be used to facilitate the imposition or execution of the death penalty.30

26 Article 11 Paragraph (1) letter b Agreement Between Japan and European Union on Mutual Legal Assistance in Criminal Matters. This provision is also not absolute, considering that Article 11 paragraph (4) stipulates that before refusing the MLA request, the EU country concerned is required to consult with Japan regarding whether assistance can be provided under certain conditions and if these conditions are agreed upon, the assistance will be provided.
27 Council of European Union No. COM (2019) 70, February 5 2019
30 Ibid.
The Government of Indonesia experienced a similar obstacle when submitting an MLA request to the Australian Government to handle cases in the case of Jessica Kumala Wongso, better known as the Coffee Cyanide case.\textsuperscript{31} Australian Minister of Justice Michael Keenan approved the Australian Federal Police to assist the Police in obtaining evidence related to the case in Australia after obtaining assurances that the Indonesian side would not prosecute Jessica Kumala Wongso with the death party.\textsuperscript{32} As a reaction to the death penalty implementation on three defendants in the Bali Nine case by the Indonesian Court, the Australian Federal Police set stricter requirements as a condition for cooperation between the Indonesian and Australian Police. The condition is that the provided assistance will not impose the death penalty.\textsuperscript{33}

<table>
<thead>
<tr>
<th>Case</th>
<th>Countries</th>
<th>MLA Request</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harnoko Dewantoro (Indonesian)</td>
<td>Indonesia-US</td>
<td>Fulfilled</td>
<td>Nationality principle implemented</td>
</tr>
<tr>
<td>Khasanah (Indonesian)</td>
<td>Indonesia-Singapore</td>
<td>Fulfilled</td>
<td>Nationality principle implemented</td>
</tr>
<tr>
<td>Jen Soering (Germany)</td>
<td>UK-United States</td>
<td>Fulfilled</td>
<td>UK violates the ECHR</td>
</tr>
<tr>
<td>Elgizouli (British)</td>
<td>UK-United States</td>
<td>Fulfilled</td>
<td>UK violated Data Protection Law</td>
</tr>
<tr>
<td>Jessica Kumala Wongso (Indonesian)</td>
<td>Indonesia-Australia</td>
<td>Fulfilled</td>
<td>With guarantee that assistance used by the Indonesian Police will not impose death penalty.</td>
</tr>
</tbody>
</table>

Based on the table 2, countries that still implements death penalty proves the nationality principle very effective in solving crimes perform abroad, where countries who abolishes death penalty consider solely implementing nationality principle violation towards human rights. There is a constant demand in prioritizing human rights regarding but international communities must also respect a country’s sovereignty by not ignoring the nationality

\textsuperscript{33} Malkani Bharat, Op.Cit
principle. Hence, between countries who needs MLA requests and happens to share different perspective on death penalty will apply conditional MLA. Conditional MLA means that assistance from abolishing countries are not used to impose death penalty. The description above shows international pressure on countries to abolish or implement a moratorium on the death penalty, the trend to reject MLA is adopted to suppress the death penalty in abolitionist countries. Thus, it can be estimated that Indonesia will experience difficulties prosecuting criminal cases that are punishable by the death penalty, the proof of which requires cooperation from other countries in the form of MLA. This condition can be fatal in prosecution failure, especially for cases that are tried based on nationality principles considering that most of the evidence required is in other countries, especially in the country where the crime occurred.


As described in the introduction, the state's interest in protecting its citizens becomes more complex when nationality jurisdiction is applied in Indonesia, which still maintains the death penalty in effect. There is a possibility that death penalty crimes are implemented if tried in Indonesia. Suppose the country where the crime occurred is a country that has abolished the death penalty. In that case, it will not be willing to assist Indonesia in submitting the evidence needed to try the case in Indonesia, considering that there is a possibility that the evidence will be used to impose the death penalty. The complexity of the problem is illustrated in Article 8 paragraph (5) of the Draft Criminal Code. This Article regulates the exceptional nature of the death penalty's nationality principle, which stipulates that the death penalty cannot be imposed if the country where it occurs is a death penalty crime. Nationality Principle in the Draft Criminal Code is regulated in Article 8 of the Draft Criminal Code with a formulation almost the same as the current Criminal Code. However, the new regulation in Article 8 paragraph (5) stipulates that the death penalty does not apply in Indonesia if, according to the country’s law where the crime was committed, it is not punishable by the death penalty. It can only be applied if the act is also punishable by death according to the country where the act was committed. This provision makes the threat of capital punishment in Indonesian criminal law exceptional if it is applied according to an nationality principle.

Based on the description above, the provisions of Article 8 paragraph (5) of the Criminal Code Draft concerning the exceptional nature of the threat of capital punishment in the application of nationality principles have an aspect of benefit in providing legal protection to Indonesian citizens who commit crimes abroad. Accommodating the nature of Indonesian criminal law as a more favourable provision to refuse extradition requests for Indonesian citizens submitted by the country where the crime occurred. According to Law
Number 1 of 1979 concerning Extradition, the principle of not surrendering Indonesian citizens can deviate if the person concerned is more fortunate to be tried in the country where the act was committed. Therefore, the threat of capital punishment, which is still regulated in positive law in Indonesia, can be considered as an unfavourable provision and therefore can hinder efforts to protect Indonesian citizens from being tried in Indonesia based on nationality principles.

Second, providing the basis for requests for extradition by Indonesia against Indonesian citizens requested by several countries with the basis of applying different jurisdictions. As described above, it is not uncommon to expect that the country where the crime occurred will hand over the defendant to be tried by the country of their citizenship. It could mean that the country does not have full sovereignty to prosecute acts within its territory. However, this condition becomes different if an Indonesian citizen's victim of a crime is a fellow foreign citizen. This possibility can occur in criminal events on a ship or aircraft. The ship's captain usually hands the perpetrator to the country's local authority, where the ship docked, or plane landed. There is a meeting of three jurisdictions at once, namely territorial jurisdiction, nationality jurisdiction, and passive national jurisdiction. Under these conditions, it is possible for Indonesia to apply for extradition against the person in order to prevent being judged by victim citizenship's citizenship that implements the death penalty.

The death penalty's three exceptional characteristics in the active national implementation's jurisdiction can prevent the country from fulfilling MLA requests from Indonesia regarding the evidence submission needed for the prosecution and proof of acts being tried in Indonesia based on nationality principles. As explained above, the country where the crime took place is interested in ensuring that Indonesia punishes the perpetrator if the Indonesian government refuses to extradite. However, this condition can lead to polemics if, through MLA, the Indonesian government violates international obligations and positive laws that apply not to assist in cases punishable by the death penalty. These consequences certainly have implications for the success of prosecution carried out by Indonesia, considering that the application of the nationality principle will significantly depend on the assistance of other countries, especially the country where the crime occurred in supporting the necessary evidence needed in proving the case.

C. Conclusion

The philosophical foundation in the application of the nationality principle aims to maintain a balance between the right of the country of origin to protect its citizens and the obligation of every civilized country to ensure that
perpetrators of crimes are still punished due to their actions. In this context, the protection function in the nationality principle means a person will benefit more if they are judged based on the law of his nation rather than the law of another country. Foreign law will not provide legal awareness of his native nation.

Indonesia's position, which still applies the death penalty, can affect the effectiveness of applying nationality principles, especially from obtaining evidence needed to prove the defendant's actions. With the growing international pressure on retention expert countries to abolish or implement a moratorium on the death penalty, the trend to reject MLA may be adopted by other countries that have abolished the death penalty to suppress the use of the death penalty in abolitionist countries. Human rights must always be prioritized, but international communities must also respect a country's sovereignty by adhering to the nationality concept. As a result, countries that require MLA requests yet have opposing viewpoints on the death penalty will use conditional MLA. Conditional MLA means that help from nations that have abolished the death penalty is not utilized to enforce it.

The exceptional nature of the death penalty nationality principle's implementation regulated in Article 8 paragraph (5) of the Draft Criminal Code can support the effectiveness of legal protection against Indonesian citizens who commit criminal acts abroad. Furthermore, the regulation accommodates the Indonesian criminal law as a more favourable provision in implementing extradition. Therefore, it prevents the country of crime from fulfilling MLA's request from Indonesia regarding the submission of evidence needed for the prosecution and proof of the acts being tried in Indonesia based on nationality principles.

D. Suggestions
Although the exceptional nature of the death penalty as regulated in Article 8 paragraph (5) of the Criminal Code can be a middle way to accommodate future national criminal law politics, its implementation is only limited to the application of nationality principles. For this reason, the Criminal Code Draft needs to regulate the Attorney General of the Republic of Indonesia's discretion as to the executor of the prosecution authority in Indonesia. Thus, the Attorney General of Indonesia has to guarantee not to impose the death penalty as a legal umbrella. Therefore, it legitimizes the enforcement of the death penalty's exceptional nature to all criminal cases whose handling requires extradition and MLA cooperation.

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