

**A COMPARATIVE STUDY OF EXTRADITION PRACTISE
BETWEEN MALAYSIA AND UNITED KINGDOM**

By

Afif Ahmayuddin (2007127475)

Darren N. Punai (2007143819)

Nur Afiah Ahmad Radzi (2007144151)

Submitted in partial fulfilment of the requirements
for the degree of Bachelor of Legal Studies (Hons)

Universiti Teknologi MARA

Faculty of Law

April 2010

The students/authors confirm that the work submitted is their own and the appropriate credit has been given where reference has been made to the work of others

Acknowledgement

This legal research has been successfully carried out by a team which comprises of Afif Ahmayuddin, Darren N. Punai and Nur Afiah Ahmad Radzi.

We thank the Almighty God for the success of this Project Paper. Without His Grace and Mercy, the project paper would not have been what it is today.

Our greatest gratitude is to our supervisor, Mdm. Norita Azmi, who has never failed to give us her guidance and support throughout the whole process of completing this project paper. Her time and attention is most appreciated especially during the meetings and consultation every Thursday. Her patience in us is most valuable indeed.

Our sincerest appreciation goes to those who participated in guiding us in coming to the answers, mainly, the members of AG Chambers in the Extradition Unit. The head of Extradition Counsel, Mr Azmir Shah Zainal Abidin and other Federal Counsels involved; Puan Wan Nor Sakina Saad, Encik Abu Bakar Mohamad Fuad and Puan Siti Amyrah Johari.

This appreciation also goes to Datuk Dr Jeffery Kitingan who took his time to lend his assistance in sharing his experience and opinion on extradition and human rights. He was also involved in an actual case of extradition in *The Crown Solicitors v Datuk Dr. Jeffery Kitingan*. His clarification had helped us tremendously in the development of this project paper.

Abstract

This legal research is conducted with an aim to compare and analyse the extradition practise in Malaysia and United Kingdom. Even though most countries especially Malaysia, follow the system of United Kingdom, it lacks certain safeguard that an extradite requires. Thus, this research will focus on the protection of the Human Right in accordance with the case of extradition.

The scope of this legal research is on the legislation of extradition and its relation to the protection of human rights. A comparative analysis study has been conducted to examine the distinction between Malaysia and United Kingdom.

This legal research will be based on the secondary sources from the Law Library of Universiti Teknologi MARA (UiTM). We have utilized legislation, newspaper articles, online articles, books, cases, and other appropriate sources that relate to the extradition process in Malaysia as well as United Kingdom to analyse the provisions and practices of the laws of both states.

It is hoped that this legal research will provide a comprehensive discussion on the fundamental rights of an individual in regards to extradition process in Malaysia and proposed amendments or suggestion to the current law to give better protection to all parties involved in an extradition case.

TABLE OF CONTENT

Acknowledgement	ii
Abstract	iii
Table of Content	iv

CHAPTER ONE: A COMPARATIVE STUDY OF EXTRADITION PRACTISE BETWEEN MALAYSIA AND UNITED KINGDOM

1.1	Introduction	1
1.2	Problem Statement	5
1.3	Objective	7
1.4	Literature Review	7
1.5	Methodology	10
1.6	Scope of Limitation	11
1.7	Significance of the Study	11
1.8	Provisional Plan of Research	12

CHAPTER TWO: LEGAL FRAMEWORK OF EXTRADITION PRACTISE IN MALAYSIA AND ITS RELATION TO HUMAN RIGHTS

2.1	Introduction	13
2.2	The Human Rights Position in Malaysia	14
2.3	Fundamental Liberties and Article 149	15
2.4	Extradition and Human Rights in Malaysia	15
2.5	Cases to Illustrate the Need for Provisions of Human Rights in the Malaysian Extradition Practise	16
2.6	Conclusion	18

CHAPTER 1

A COMPARATIVE STUDY OF EXTRADITION PRACTISE BETWEEN MALAYSIA AND UNITED KINGDOM

1.1 Introduction

Extradition is the process by which one jurisdiction secures the return of a suspected criminal from another jurisdiction.¹ It is a process where a person is surrendered by one state to another where the person has been accused or convicted of committing an offence in the territorial jurisdiction of the latter, which being competent to try and punish him.²

Extradition from the perspective of case law is also defined as:

*...the formal name given the process whereby one sovereign state (the requesting state) asks another sovereign state (the requested state) to return to the requesting state someone (defendant) present in the requesting state in order that he may be brought to trial on criminal charges in the requesting state. The process also applies where the defendant has escaped from lawful custody following conviction in the requesting state – or is otherwise unlawfully at large – and is found in the requested state.*³

The principle of state sovereignty, one of the basic premises of international law, encompasses the right of a state to control all persons within its territory.⁴ In keeping with this principle, international law does not impose a duty of extradition on states. Instead, this duty is established solely by treaty.⁵

Extradition treaties are bilateral in character and there is no uniformity and consistency in its provisions due to the different legal systems of each states that

¹ Malcolm N. Shaw, *International Law*, 5th Edition (2003), Cambridge University Press

² *Oxford Dictionary of Law* (7th Edition 2009)

³ *R v Evans ex p Pinoche Ugarte*, 28th October 1998, CO/4047/98, per Lord Bingham of Cornhill CJ

⁴ D.J Harris, *Cases and Materials on International Law*, 6th Edition (2004), Sweet and Maxwell

⁵ See Ivor Stanbrook & Clive Stanbrook, *The Law and Practice of Extradition XXV* (1980)