

## CHAPTER I

### INTRODUCTION

Along with the development of human and technology, the development of crime is also improving all around the world. The criminals today may command not only in a local scale, but in a world wide scale. Criminals today can do their criminal act in one place, appears as someone in another place or even develop into some integrated terrorism action. In order to stem these actions, cooperation between states is very important to build, especially in law enforcement and security sector.<sup>1</sup>

With today's development of transportation, one criminal can easily escape to another state in order to dodge from the law from the crime they had done. Extraditions treaty is one of the actions to stem nowadays' developed criminal acts. Nowadays, many states have made extradition treaty with other states. According to [businessdictionary.com](http://businessdictionary.com), Extradition Treaty enables one state to come in another states' law territory to catch the suspected criminals from their country and bring them back to be on trial in their home country. Most of the states today have approved this extradition treaty with another state.

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<sup>1</sup> *Kejahatan Transnasional Meningkat* Retrieved from <http://www.hukumonline.com/berita/baca/lt50f3a3710b543/kejahatan-transnasional-meningkat> 25 November 2015 16.40

## A. Background

Along with Human and Technological development, the level and variant of crime is also increasing. One of the examples is that, nowadays drug markets are just controlled by someone inside a jail just by using a gadget by a man called Freddy Budiman.<sup>2</sup> This seems to be a small and national case only, but in a small scope, it now has developed into organized crime which has crossed inter boundaries or called as Transnational crime. Transnational crime are crimes that have actual or potential effect across national borders and crimes which are intra-State but which offend fundamental values of the international community.(Boster, 2003) Today's criminal can sit in their backyard and at the same time controls the criminal act in another country just by using technology, especially technology in communication. Almost all states in International world have to be aware and to be prepared to deal with organized transnational crime.

Along with today's technological development, especially in transportation technology, those who are suspected or sentenced for the criminal acts are able to leave their home country to escape the law. To overcome and prevent such a case to happen, a state usually formulate and approve Extradition Treaty with another state. Extradition Treaty is bilateral, and usually reciprocal, it is a treaty between sovereign states which (upon request) provides the regulations for the surrender of person(s) accused of a crime under the laws of the requesting state. Extradition may be barred for offenses other than those punishable in the

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<sup>2</sup> 4 Fakta Freddy Budiman, raja narkoba lolos hukuman mati tahap dua. Retrieved from <http://www.merdeka.com/peristiwa/4-fakta-freddy-budiman-raja-narkoba-lolos-hukuman-mati.html> 25 November 2015 16.54

surrendering state, and (commonly) its courts must be convinced that a prima facie criminal case exists.<sup>3</sup>

The extradition could be between the two countries that have no extradition treaty, but they surrender fugitive criminals for trial, despite evidence to corroborate allegations of crimes that can not be shown. This generally occurs among countries that have good relationship. Thus it does not mean that the agreement is an absolute requirement in performing the handover of criminals.

According to UU No.1 Tahun 1979, Extradition Treaty means “submission by the state to the state requesting the submission of a person suspected or convicted for committing a crime outside the country who submitted and within the jurisdiction of the territory of the requesting submission, because the authority has the right to prosecute and convict”.<sup>4</sup> In the international context, to counter corruption, majority of the countries have agreed to prevent and eradicate corruption by conducting international cooperation in many forums. Indonesia follows the development of the prevention against corruption by joining the agencies or international organizations as well as have signed several anti – corruption International conventions, such as the Convention UN Anti-Corruption, which was then called the UNCAC (United Nations Convention

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<sup>3</sup> *Extradition Treaty Definition*. Retrieved from <http://www.businessdictionary.com/definition/extradition-treaty.html> .15.34

<sup>4</sup> *Undang-Undang Republik Indonesia Nomor 1 Tahun 1979 Tentang Ekstradisi* Retrieved from [http://hukum.unsrat.ac.id/uu/uu\\_1\\_79.htm](http://hukum.unsrat.ac.id/uu/uu_1_79.htm) 27 November 2015 10.35

against Corruption ) and finally ratified as UU. No 7 Tahun 2006<sup>5</sup> by Indonesia and G - 20 (Working Group on Anti- Corruption - WGAC).

Indonesia as one of the developing countries, especially in the South East Asia region has also faced the consequences of the development of human and technologies, in this case is the increasing number of crime in Indonesia. Not only they have to be prepared for incoming criminals but also have to deal with escaping criminals. Escaping criminals today also become one of Indonesia's biggest problems along with the transnational criminal, such as drug smuggling and terrorism. Many evicted criminals, especially in corruption escaping to another country which has no extradition treaty with Indonesia in order to outfox the law enforcement in Indonesia. The problems of corruption, collusion and nepotism that occurred in Indonesia since Reformasi in 1998 became the chore for the Indonesian government to suppress the number of violations and embezzlement of the money. The phenomenon that occurs is the money laundering committed by Indonesian corruptors to invest the proceeds of corruption to other countries. Until today, Indonesia has Extradition Treaty agreed and ratified with several countries, such as Malaysia, The Phillipines, Australia, Hongkong, and India, but unfortunately Singapore is not on the list yet. Up to now Singapore becomes one of the closest states that become the target for criminals from Indonesia in conducting money laundering, as practiced by Gayus Tambunan. This case increases the number of cases of criminals who run and hide

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<sup>5</sup> *Undang-Undang Republik Indonesia Nomor 7 Tahun 2006* tentang pengesahan United Nations Convention Against Corruption, 2003 (Konvensi Perserikatan Bangsa-Bangsa Anti Korupsi, 2003)

in Singapore<sup>6</sup>. One of the favourite countries for the criminals to escape from Indonesia's law is unfortunately not somewhere far, but its own neighbor country, Singapore. Singapore becomes "heaven" for Indonesian criminals, since Indonesia and Singapore until today do not have a ratified Extradition Treaty, so it is safe for them to stay and live in Singapore.

It doesn't mean that Indonesia and Singapore want to stay this way and ignore the facts that many criminals from Indonesia now escape to Singapore, both countries have negotiated for the Extradition Treaty to happen. The willingness of Singapore and Indonesia to make extradition treaty is not a new idea. Extradition Treaty is important for both countries, even though it may come with different perspective. It is the sign that both countries have a commitment to combat the crime and especially corruption in South East-Asia. The willingness of Indonesia to have an extradition treaty with Singapore has begun since about 30 years ago, it was in 1972 since the era of President Soeharto. Unfortunately, that time, because of the principal law differences, Singapore saw that the Extradition Treaty was unlikely to be agreed. In the next era of government, the Extradition Treaty talks still went, with even President B.J. Habibie once even accused Singapore as a racist country and is no more than a "little red dot in a sea of green" as he tried to push Singapore to sign the extradition treaty<sup>7</sup>. Unfortunately, this talk did not go well and remained to be just a concept until in 2005, when the

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<sup>6</sup> Daftar 45 Pelarian Indonesia ke Luar Negeri. *Received from* <http://nasional.kompas.com/read/2011/07/04/09464965/daftar.45.pelarian.indonesia.ke.luar.negeri> i 27November 2015 16.35

<sup>7</sup> *Kata Habibie*. *Received from* <http://www.antarane.ws.com/berita/42620/kata-habibie-small-little-red-dot-agar-belajar-dari-singapura> 25 November 2015 19.32

leaders from both countries agreed to hold talks about the extradition treaty. Finally, after a 2 year long-negotiations, with a lot of high and low relations in both countries, in April 2007 Singapore's Prime Minister's Lee Hsien Loong and Indonesia's President Susilo Bambang Yudhoyono signed the extradition treaty in Bali, Indonesia. This treaty is a sign of both states' commitment to combat crime, especially corruption in both countries and South East Asia region. The treaty contains 19 articles which guide the implementation of the treaty<sup>8</sup>. Unfortunately, since it was signed by both countries' leader, the Treaty is going nowhere. The implementation of the treaty cannot be done until today, as we see that many criminals especially corruptors from Indonesia still enjoy living in Singapore, such as Muhammad Nazarudin and Anggoro Wijaya.<sup>9</sup>

The Extradition Treaty between Indonesia and Singapore is one of the toughest Extradition Treaty Indonesia may have to be involved with. As a comparison, Indonesia's Extradition Treaty with Malaysia did not take too much time to be agreed and implemented. Indonesia and Malaysia agreed on the Extradition Treaty at 7 January 1974 where both country leaders signed the treaty. Later on, Indonesia implemented the Treaty as a Undang-Undang Republik Indonesia Nomor 9 Tahun 1974 and signed by the President at 26 December 1974<sup>10</sup>. The Extradition treaty contains 18 articles which set the rules of the extradition between both countries. It only took 11 months since the treaty was

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<sup>8</sup> *Perjanjian Antara Pemerintah Republik Indonesia Dan Pemerintah Republik Singapura Tentang Ekstradisi Buronan*. Received from [http://treaty.kemlu.go.id/uploads-pub/4192\\_SGP-2007-0031%20.pdf](http://treaty.kemlu.go.id/uploads-pub/4192_SGP-2007-0031%20.pdf) 25 November 2015 21.01

<sup>9</sup> *Daftar 45 Pelarian Indonesia ke Luar Negeri*. Op.Cit.

<sup>10</sup> *Lembaran Negara dan Tambahan Lembaran Negara Tahun 1974* ln 1974/63; tln No. 3044 Page 1-25. 21.05

agreed and signed by both countries' leaders and then ratified and implemented as a constitution, while it took about 30 years between Indonesia and Singapore and yet it is still unfinished until today. Beside Malaysia, Indonesia has Extradition Treaty with another neighbor countries, such as The Phillipines, Thailand, and Australia.

Until today we are all still hoping that the Extradition Treaty between Indonesia and Singapore can soon be finished, signed, ratified and implemented so that the law enforcement in Indonesia could run well and the criminals, especially the corruptor can be prosecuted fairly for what they did. Hopefully the new government of the new elected president could bring a new hope for the Extradition Treaty and both countries could agree with the treaty and the treaty is equally beneficial for both country.

### **B. Research Question**

With both Indonesia's urgent needs of the extradition treaty, so the research question based from the background above is: Why does the Extradition Treaty is not ratified by Indonesia yet?

### **C. Theoretical Frameworks**

To explain about the reason behind the stalled Extradition Treaty between Indonesia – Singapore, this research will apply the Concept of Foreign Policy and Perception Theory which results in the Governmental Politics Model by Graham Allison.

### ***Concept of Foreign Policy***

General understanding of Foreign Policy is state's policy towards other states with some purposes or intention. Concept of Foreign Policy is defined as the action of the state to fulfill its purpose or/and interest in the international Arena.<sup>11</sup> According to Carlsnaes, Foreign Policy is all about achieving interest and aim by the officials in the name of the sovereign communities<sup>12</sup>. The Foreign Policy of a state is depending on its own condition, such as its geopolitical position, its power, its stability of the pressure of groups and its interest.

Foreign Policy is different from Domestic Policy. Domestic Policy is referring to decision or policy which is made by the state, in the state, for the state while foreign policy is defined as decision or policy to apply to other countries or overseas. According to Northedge (1998), Foreign Policy seen as "an interplay between the outside and inside". It means that foreign policy is an action stimulated by the domestic interest. Frankel (1973) sees foreign policy as "a dynamic process of interaction between the changing domestic demands and the changing international environment". This definition sees Foreign policy as consisting decision and action which involve the interaction between one state to the others, interaction between internal and external environment, with the interest of the states concerned. By those definitions, Foreign Policy means the action of

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<sup>11</sup> Ernest Petri, *Foreign Policy: from Conception to Diplomatic Practice*. Leiden: Martinus Nijhoff, page1.

<sup>12</sup> Ibid, page 3.



state towards external environment motivated by their national interest. Domestic Politics is important in the process of decision making on Foreign Policy.<sup>13</sup>

Foreign policy decision -making whether in a democratic or dictator states, is limited by an intricate web of government and social restraints. In this course, we will understand this web in terms of three general aspects of foreign policy making. (1) types of government, (2) types situations and (3) policy.<sup>14</sup> The elements of Foreign Policy nowadays, is not only restricted into the state and its organ itself, but also influenced by other actors, such as public opinion, political parties and group, the society, media propaganda and economic objects. Moreover, the environment of international politics is also influencing each state's foreign policy. Foreign Policy of a state can be determined by their geographical condition, history, economy, political view, social strength, military, and any other factor and condition inside that country itself. One set of internal factor centers on the policy making impacting various sub national actors. These include political leaders, bureaucratic organizations, legislatures, political parties and opposition, interest groups and the public.<sup>15</sup>

### ***Perception Theory***

According to the Perception Theory, human or group of humans to take a decision and to act based on what they know. Responses assessment of a person on an issue depends on how he defines the situation. Thus, differences in human

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<sup>13</sup> Alex Mintz and Karl Derouen Jr. *Understanding Foreign Policy Decision Making*, 2010. p.70-73

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

behavior is closely related to the difference way of looking at the reality/facts and or in other words, a person's attitude is influenced by the perception of each.<sup>16</sup>

Perception is one of the psychological aspects that are important to humans in response to the presence of various aspects and symptoms in the vicinity. Perception contains a very broad sense, involving internal and external. Various experts have given varying definitions of perception, although in principle they have same meaning. According to Kamus Besar Bahasa Indonesia, perception is a response (acceptance) directly from something. Process someone knows a few things through the senses.<sup>17</sup>

To better understand perceptions, here are some definitions of perception, according to experts, including:

1. Desiderato, perception is the experience of objects, events, or relationships obtained by concluding information and interpret the message. Perception is to give meaning to sensory stimuli<sup>18</sup>
2. Branca, defines perception as a process that is preceded by sensing<sup>19</sup>
3. Moskowitz and Orgel, perception is a process that is intergrated of individuals to the stimulus it receives<sup>20</sup>

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<sup>16</sup> Rakhmat, Jalaluddin. 1996. *Teori-teori Komunikasi*. Bandung : PT.Citra Aditya Bakti, p.15

<sup>17</sup> Kamus Besar Bahasa Indonesia. Retrieved from <http://kbbi.web.id/persepsi> 30 November 2015 20.00

<sup>18</sup> Rakhmat, Jalaluddin, Op Cit.

<sup>19</sup> Walgito, Bimo. 2002, *Pengantar Psikologi Umum*, Yogyakarta: Andi Offset. p.45

<sup>20</sup> Ibid. p.46

4. Joseph A. DeVito, perception is the process by which we become aware of the many stimuli that affect our senses.<sup>21</sup>

Every person or group has a tendency to see the same thing in different ways. Such differences may be influenced by many factors, including the knowledge, experience and perspective. Perception is also interlocked with the eyes of a person against a particular object in a different way by using sensing devices owned, then attempt to interpret it. Both positive and negative perceptions are like files that have been stored neatly in the realm of our subconscious mind. The file will soon appear when there is a stimulus that triggered it, there are events that open. Perception is the result of a brain to understand or assess something that happened in the vicinity.<sup>22</sup>

### **Terms of Perception Occurrence**

There are several requirements that affect the formation of the perception by individuals or groups. According to Sunaryo, the terms of the perception is as follows:

1. The existence of the object perceived
2. Attention is the first step as a preparation for the holding of perception.

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<sup>21</sup> Mulyana, Deddy. 2002, *Ilmu Komunikasi Suatu Pengantar*. Bandung : PT. Remaja Rosdakarya. p.16

<sup>22</sup> Waidi. 2006. *On Becoming A Personal Excellent*. Jakarta: PT Elex Media.

3. Presence sensing devices/receptor that is a means to receive a stimulus
4. Sensory nerve as a tool to continue the stimulus to the brain, which then as a tool to organize the response.<sup>23</sup>

### **Factors Influencing Perceptions**

There are several factors that can affect the onset of the perception of a person or group. According to Miftah Toha, the factors that influence a person's perception is as follows:

- a. *Internal factors*: the feelings, attitudes and personality of the individual, prejudice, desire or expectation, attention (focus), learning, physical state, psychiatric disorders, values and needs are also of interest, and motivation. Individuals or groups as internal factors interact in the perception of the individual holding. There are two sources that may affect each individual's perception; psychologically and physically. When the physiological system is compromised, it will take effect in one's perception. While the physical aspect which, among others, the experience, 19 of feeling, thinking ability, terms of reference, and will affect the person's motivation to conduct perception.<sup>24</sup>
- b. *External factors*: family background, information, knowledge and needs, intensity, size, repetition of motion, things are new and familiar isolation or lack of a object. Environment or situation also affects

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<sup>23</sup> Sunaryo, 2004, *Psikologi Untuk Keperawatan*, Jakarta : Penerbit Buku Kedokteran EGC

<sup>24</sup> Toha, Miftah. 2003, *Kepemimpinan Dalam Manajemen*. Jakarta : PT. Raja Grafindo Persada

perception. Environment or situation, especially behind the stimulus will also affect the perception if the object is a human perception. The object and the background environment is a unity of objects that are difficult to separate. The same object with different social situations could produce different perceptions.<sup>25</sup>

In this regard the Government and the Parliament are two different individuals who have different perspective to see Extradition Treaty between Indonesia and Singapore. Differing perceptions are the cause of the differences in view of the interest in the extradition treaty.

The problem is the difference of opinion between the Government & The Parliament . The Government considers that the Defence Cooperation Agreement that is included by Singapore is perfectly acceptable, as a continuation of military cooperation between Indonesia and Singapore that already exist. Whereas the House sees that the Defense Cooperation which is proposed by Singapore is a thing that can not be accepted because besides it has nothing to do with the Extradition Treaty, it is also considered as a threat to the sovereignty of the Republic of Indonesia.

### ***Governmental Politics Model (Bureaucratic Politics Models)***

There are three kinds of Decision Making Process models by Graham Allison based on who are involved in the decision making process itself. The first is Rational Actor Model. RAM Rational Actor Model oscillates between decision

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<sup>25</sup> Ibid.

and choice where “*decision presupposes a decider and a choice among alternatives with reference to some goal*”.<sup>26</sup> The second one is Organizational Behaviour Model. Organizational Behaviour Model stresses that the less it matters who you are in any organization, the better are the organizations’ decisions and recommends letting the organizations perform reliably. Organizations make an individual replaceable as much as possible using its ‘standard operating procedures’ (SOPs).<sup>27</sup> The Third one is Governmental Politics Model or also sometimes known as Bureaucratic Politics Models.

Governmental Politics Model explains that the decisions between nation states are due to politics. The relation between states is not due to a rational decision, nor an output of an organization, but is a result of a bargaining between group members. (Allison, 255) The Governmental Politics Model by Allison views the actions of the government as political resultants. This model sees decision as the output of the “game” played by the governmental leaders. The Governmental Politics Model explains on why particular governmental decision has been made or how and why one pattern of behavior of government created, it is needed to identify the “games and player” and to identify the coalitions, compromise and bargains made among them<sup>28</sup>. The Governmental Politics Model by Allison is proposed with this proposition:

1. A nation’s action are driven by its leaders negotiations and politics

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<sup>26</sup> Tulase, A. Kafle. 2011, *Making a Difference: Allison’s Three Models of Foreign Policy Analysis*. Received from [http://www.academia.edu/592889/Making\\_a\\_Difference\\_Allisons\\_Three\\_Models\\_of\\_Foreign\\_Policy\\_Analysis](http://www.academia.edu/592889/Making_a_Difference_Allisons_Three_Models_of_Foreign_Policy_Analysis) p.3 27 November 2015 21.14

<sup>27</sup> Tulase, (2011), Op cit, p.5

<sup>28</sup> Tulase, (2011). Op cit, p.9

2. Personal background and interests affecting are determinant on how they achieve their goal
3. Leaders have to gain consensus with their underlings, to avoid the risk of being understood or ignored
4. Related to the above proposition, the make-up of a leader's entourage will have a large effect on the final decision
5. Every leaders has their own ability (ex. charisma, personality, skills) in decision making
6. If a leader is certain enough, they will not seek input from their advisors, but rather, approval.
7. The failure of leader to make consensus with its inner circle could give the opponents advantage. A leader should create consensus with its inner circle
8. Miscommunication, misunderstandings, and downright disagreements may cause the other leaders may not approve the decision.<sup>29</sup>

The characteristic of Governmental Politics Model is involving many actors who are focusing on many aspects, act on national, organizational or personal goals and also who decide the government's decision.<sup>30</sup>

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<sup>29</sup> Allison, Graham and Zelikow, Philip (1999), *Essence of Decision: Explaining the Cuban Missile Crisis 2nd Edition*, New York: Longman.

<sup>30</sup>Tulase A. Kafle (2011) *Making a Difference: Allison's Three Models of Foreign Policy Analysis*. Ibid.

### **Basic assumption of Bureaucratic Politics Models (Governmental Politics Model)**

1. Players (political Ad Hoc) occupy critical position within the Government
2. Action Channels are politically chosen to work on the issue and determine “who’s got the actions”
3. Parochial priorities (organizational survival priorities)
4. A competitive game of Bureaucratic Politics
5. Final output is a Collage composed of individual act, outcome of major and minor games and foul-ups.

According to Graham Allison, there are three games arguments on how a decision can be made. The first is summarized in the phrase "Where you stand depends on where you sit". That is, a person's views or stance on an issue is significantly or substantially influenced by his professional position.<sup>31</sup>

Second, the plural perspectives and diverse backgrounds that make it up. It can be ascertained that the debate, conflict of interests between the makers and implications for Theory of Political bureaucratic decisions occur. The influence of a person against the final result is determined mainly by two factors. The first factor is the structure, which influence or power inherent in his professional position, the second factor is the individual.<sup>32</sup>

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<sup>31</sup> Allison, Graham and Zelikow, Philip (1999), *Essence of Decision: Explaining the Cuban Missile Crisis 2nd Edition*, Op.Cit.

<sup>32</sup> Ibid.



The third concerns the form of the final outcome or as they are called resultant term or solutions that are not desired by parties involved in the decision making process from the beginning. In other words, a final decision is the product of a conflict of interest, compromise, people's interests and the influence of different, negligence or unintentional mistakes, misunderstandings.<sup>33</sup>

This theory emphasized more on the role of government leader in bureaucracy process to make a final decision as an outcome of wrangling between congress (House of Parliament) and the other government agencies. This multiple players in decision making process placed the power of government administration in the highest position to decide a policy. This model is proposed to explain why a particular formal governmental decision was made, or why one pattern of governmental behaviour emerged. It is necessary to identify the games and players, to display the coalitions, bargains and compromises, and to convey some feel for the confusion. The output of decision making process might heavily relied on whom has the highest power and authority.<sup>34</sup>

In this study case, PM Lee Hsien Long and President Susilo Bambang Yudhoyono already signed the extradition treaty in Bali which means the status quo is in the weak position due to the nature of law and regulation required this decision shall ratified by House of Parliament. This argument is supported by Halperin's bureaucratic politics model, the president is reined in by the bureaucracy. Presidential policy goals must be communicated to department heads to begin the implementation process. In this study case, the determining main

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

actors that have part on the decision making process on the treaty is the President and the House of Parliament of Indonesia. Also, beside them there are also some other actors such as the Foreign Minister and Defense Minister.

#### **D. Hypothesis**

Indonesia have not ratify the Extradition Treaty because there are differences of views between The Legislative and The Executive regarding the Defence Cooperation Agreement, which is proposed as a binding requirement for the Extradition Treaty.

#### **E. Objective of The Research**

The objectives of this research are;

- 1) To explain why the Extradition Treaty between Indonesia and Singapore is still not finished until today
- 2) To understand the Decision Making Process actors in the Government's decision on Foreign Policy
- 3) To understand the importance of Extradition Treaty between Singapore and Indonesia.

#### **F. Range of The Research**

The research focuses on the process of Extradition Treaty negotiation between Singapore and Indonesia's government since in 2007 until 2012.

## **G. Methods of Writing**

The research applies deductive method where the theoretical framework and approaches are examined first then after that the hypothesis could be drawn. The hypothesis above will be proven through data finding and analysis of the fact related to the theoretical framework used.

The data collecting method is library research in which the data are secondary source. All the data are taken from books, scientific papers, journals, articles, electronic books, and other relevant data. All data are then analyzed using the theories determined before

## **H. Systematic Writing**

On Chapter I, I will give a brief explanation of the paper, explaining the background of the research and the problems or questions that need to be answered or the research question. And also I will explain the theoretical framework that is used to analyze the question. The hypothesis, the objectives of the research, the range of the research, the methods, and the system of writing are also written in this chapter.

Chapter II will explain about Extradition Treaty.

Chapter III will explain about Indonesia's history, politic and foreign policy.

Chapter IV will analyze the problems in the Extradition Treaty negotiations between Indonesia and Singapore.

Chapter V is the conclusion from chapter I to IV