

**AN ANALYSIS OF THE ADEQUACY OF THE DISCRETIONARY POWER OF THE
HOME MINISTER UNDER SECTION 49 SUB-SECTION 1 OF EXTRADITION ACT
1992 AND ITS PROTECTION FOR MALAYSIAN CITIZENS**

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

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Abstract

Extradition law is a wide field which encompasses not only municipal but also international law. Extradition law has evolved throughout the years among various ancient state practices. It emphasises mutual obligations between states in combating transnational crimes. The process involves the active role of relevant authorities i.e. the Minister and the Courts empowered by the respective statutes in deciding whether extradition should or should not be allowed.

Therefore it is important to evaluate the discretionary powers involved when deciding a fugitive's fate to ensure that the fundamental liberties of an individual are taken care of by the state. There are valid fears that our citizens would not receive a fair trial, be tortured or subjected to gross human rights violations when extradited to the requesting state.

Due to the high possibility of abuse of an individual's human rights by the requesting state, stricter standards on the discretionary power of the Minister needs to be placed when it comes to our own citizens. The Malaysian position on the extradition of her citizens is one which confers absolute discretion on the Home Minister. There is a lack of checks and balances on the Minister's discretionary power and the courts play a minimal role in this process.

Comparisons have been made with ASEAN nations and European Union nations to contrast various methods on the exercise of discretionary power when extraditing citizens. The research concluded that the discretionary power the Minister has is extremely wide and we submitted recommendations to review the power.

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