

Implementation of Indonesia’s Mutual Legal Assistance Policy Regarding Asset Recovery of Corruption Crimes

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ABSTRACT

The Classification of Corruption Crime as a Transnational Crime caused by its difficulty to be traced and eradicated. All countries including Indonesia struggles with corruption including its effort to recover and return the proceeds of corruption hidden away in other states. International Community including the United Nations have developed various tools for recovering the proceeds of corruption crime such as the United Nations Convention against Transnational Organized Crime (“UNTOC”) and United Nation Convention against Corruption (“UNCAC”). This Convention also includes a comprehensive set of the Mutual Legal Assistant Policy. Unfortunately, there have been only a small number of successful prosecutions to recover and return of the proceeds of corruption crime. The research problem raised discusses the implementation of international regulations and mutual legal assistance as a tool to restore and restore the results of criminal acts of corruption and the obstacles that Indonesia experiences in enforcing the provisions of these regulations. To analyze research problems above, this study uses a normative research method, with a prescriptive analysis type of research. The results show that the implementation of Mutual Legal Assistance has not been maximized, because not all provisions in UNCAC and UNTOC have been implemented in regulations, systematically and comprehensively.

Keywords: Asset Recovery, Mutual Legal Assistance, Corruption

1. Introduction

United Nations on Convention against Corruption (UNCAC)¹, describes the problem of corruption as a serious threat to the stability and security of the national and international community which has weakened institutions, democratic values and justice and endangers sustainable development and law enforcement. Furthermore, Dimitri Vlassis state that “International community in the developing or development country become increasingly frustrated at witnessing and suffering from the injustice and the deprivation that corruption brings.”²

The challenge of eradicating Corruption from a global perspective really requires international cooperation, this is due to a gap in law enforcement processes because on

¹ Romli Atmasasmita, “Strategi dan Kebijakan Pemberantasan Korupsi Pasca Konvensi Menentang Korupsi tahun 2003: melawan Kejahatan Korporasi”, Jakarta, 2006, p. 1 and Romli Atmasasmita, “Strategi dan Kebijakan Hukum dalam Pemberantasan Korupsi Melawan Kejahatan Korporasi di Indonesia: Membentuk Ius Constituendum Pasca Ratifikasi Konvensi PBB menentang Korupsi”, Jakarta, 2003. p.1

² Dimitri Vlassis, The United Nations Convention Against Corruption, Overview of Its Contents and Future Action, Resource Material Series No. 66, 2002 p. 118.

the one hand the perpetrators and assets resulting from corruption can cross jurisdictional and geographic boundaries between countries. Various examples of cases prove that the handling of corruption is very related and depends on things that are outside the state boundaries such as suspects, evidence and / or assets of criminal acts of corruption outside the country. Saldi Isra revealed that efforts to recover state assets that were stolen through corruption are not easy to do, because the perpetrators of corruption have extraordinary and difficult to reach access in hiding or laundering money from the proceeds of corruption.³

Asset Recovery as an indicator of the success of strategies and efforts to eradicate corruption is reflected in the percentage of assets recovered from Corruption, this is very important for economic recovery as a result of the Corruption Crime. Particularly for the recovery of assets resulting from criminal acts of corruption, UNCAC has arranged for international cooperation that can be carried out through mutual legal assistance in criminal matters for tracing and recovering assets. Even the mechanism of confiscation of criminal assets is one of the norms regulated in UNCAC so that States parties maximize efforts to seize assets proceeds of crime without going through the criminal prosecution process.⁴ In line with that, Indonesia has stipulated the Mutual Legal Assistance in Criminal Matter with Law Number 1 of 2006 concerning Mutual Legal Assistance and also Mutual Legal Assistance in Criminal Matters Treaty with Law Number 15 of 2008.⁵

Even so, ratifying UNCAC does not guarantee the returns and recovery of assets of the crime of corruption are running smoothly. This is due to the principle of "Protection of Sovereignty" which is the basic principle for UNCAC. Emphasis on State sovereignty in international cooperation (especially Mutual Legal Assistance in Criminal Matters) raises various problems because it is not uncommon for many countries to provide protection for perpetrators of criminal acts of corruption in that country.⁶ For example, the case of Bank Indonesia Liquidation Assistance (BLBI) with the suspect Hendra Rahardja, who escaped and kept the assets of the proceeds of corruption amounting to 1.9 trillion Rupiah, took a long time before the assets were able to return to Indonesia. It is noted that Indonesia has bilateral and multilateral Mutual Legal Assistance agreements with several countries such as Australia, Hong Kong, China, ASEAN and most recently Switzerland. However, the implementation of Mutual Legal Assistance is not without results. Most recently, the Corruption Eradication Commission returned the proceeds of corruption in the amount of 200 thousand Singapore dollars after collaborating with the Corrupt Practices Investigation Bureau (CPIB).⁷

Apart from the several successes in returning the assets of the criminal act of corruption above, this is not yet comparable to the total assets of the proceeds of corruption that are suspected of being abroad and have not been successfully executed. Indonesian Corruption Watch (ICW) said there were still 36 suspects with total assets

³ Saldi Isra, "Asset Recovery Tindak Pidana Korupsi Melalui Kerjasama Internasional", Paper presented at the workshop on International Cooperation in Corruption Eradication, 2008, p. 1

⁴ Refki Saputra, "Tantangan Penerapan Perampasan Aset tanpa Tuntutan Pidana (Non-Conviction Based Asset Forfeiture) dalam RUU Perampasan Aset di Indonesia", Jurnal Antikorupsi Integritas 3, No. 1, 2017. p. 118.

⁵ 6th Meeting of the Senior Officials on the Treaty on Mutual Legal Assistance in Criminal Matters, November 5-7 2012, Bandung, Indonesia.

⁶ Ahmad Rizki Mardhatillah Umar dan fanny Frikasari, "Kejahatan Bisnis dalam Perspektif Hukum Pidana Indonesia", Jurnal Ilmu hukum Litigasi, Vol. 6, No.2, Juni 2005. p. 202. See also Jamin Ginting, "Perjanjian Internasional dalam Pengembalian Aset Hasil Korupsi di Indonesia", Jurnal dinamika hukum, Vol. 11, No. 3, September 2011. p. 435-436.

⁷ Ibnu Haryanto, "KPK Catatkan Sejarah Pemulihan Aset Hasil Korupsi dari Luar Negeri", <<https://news.detik.com/berita/d-5109376/kpk-catatkan-sejarah-pemulihan-aset-hasil-korupsi-dari-luar-negeri>> accessed November 8, 2020. 10:15

resulting from corruption of 53 trillion rupiah.⁸ The methods that are usually used to hide proceeds of crime by perpetrators of corruption include: (a) Transfer of money proceeds from corruption through real estate / immovable assets; (b) Purchase of valuables; (c) domestic shares.⁹

2. Research Methods

For the purposes of writing this paper used a normative legal research focusing on documents and literature studies and the approach is used the statutory approach, include case and comparative approach.¹⁰ The data collected from this study is secondary data, among others are statutory regulations, various legal documents, and other references that are relevant with mutual legal assistance in criminal matters.

3. Discussion

Regulation of Confiscation and Return of Corruption Proceeds of Assets through Mutual Legal Assistance International and Transnational Regulation on Asset Recovery of Corruption

Regulation of Asset Seizure of Corruption based on UNCAC, UNTOC and UNCAC Ratification

Implementation of Asset Recovery of Corruption is closely related to Law Number 7 of 2006 concerning the Ratification of the United Nations Convention against Corruption which in its explanation letter B Point A states the importance of UNCAC Convention Arrangements into Indonesian positive law to enhance international cooperation, especially in tracking, freeze, confiscate and return assets resulting from criminal acts of corruption that are placed outside the border and increase international cooperation in the implementation of Mutual Legal Assistance.¹¹ The confiscation and / or return of the proceeds of corruption in the international world are contained in the International Mechanism of Mutual Legal Assistance as regulated in the United Nations Convention against Transnational Organized Crime (UNTOC) and the United Nations Convention against Corruption (UNCAC).¹² Mutual Legal Assistance is basically a reciprocal agreement related to criminal matters, the formation of which is motivated by the factual condition of inaction in the process of a crime due to differences in the legal system. MLA has also emerged as an effort to overcome and eradicate various transnational crimes.¹³

UNCAC regulated the Mutual Legal Assistance as stipulated in Article 46 state that:

“State parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions, and judicial proceedings in relation to

⁸ Merdeka, “PPATK Endus Sejumlah Kepala Daerah Simpan Uang Rp50 Miliar di Kasino Luar Negeri”, <<https://www.merdeka.com/uang/ppatk-endus-kepala-daerah-simpan-uang-rp50-miliar-di-kasino-luar-negeri.html>> accessed November 8 2020. 11:20

⁹ Wahyudi Hafiludin sadeli, “Implikasi Perampasan Aset Terhadap Pihak Ketiga yang Terkait Dengan Tindak Pidana Korupsi”, Tesis Fakultas Hukum: Universitas Indonesia, 2010.

¹⁰ Peter Mahmud Marzuki, “Penelitian Hukum”, Kencana: Jakarta, 2005 p. 93.

¹¹ Explanation Letter B, Undang-Undang No. 7 Tahun 2006 tentang Ratifikasi United Nations Convention against Corruption.

¹² The use of Mutual Assistance in UNCAC and UNTOC has a difference in that UNCAC obliges States parties to provide mutual legal assistance through mutual assistance while UNTOC regulates the use of reciprocal assistance only in the form of advice.

¹³ Romli Atmasasmita qualifies transnational crime, namely crimes are qualified to meet the elements (a) actions that affect more than one country; (b) acts involving citizens of more than one country; and (c) using means and methods that go beyond territorial boundaries. See Romli Atmasasmita, “Tindak Pidana Narkotika Transnasional dalam Sistem Hukum Pidana Indonesia”, Citra Aditya Bakti: Bandung, 1997, p. 47.

the offences covered by this Convention.¹⁴ Mutual Legal Assistance to be afforded in accordance with this article may be requested for any of the following purposes: (a) taking evidence or statements from persons; (b) effecting service of judicial documents; (c) executing searches and seizures, and freezing; (d) Examining objects and sites; (e) Providing information’s, evidentiary items and expert evaluations; (f) [...] etc. up to point (j); (k) the recovery of assets, in accordance with the provisions of chapter V of this convention.”¹⁵

UNCAC regulates the return of assets in Chapter V in article 51 to Article 58 concerning Asset Recovery and in CHAPTER VII on mechanisms the implementation. UNCAC has made major breakthroughs regarding Asset Recovery which includes a system for prevention and detection of criminal acts of corruption,¹⁶ **a system for direct asset recovery, and international cooperation for the purpose of confiscation.**¹⁷

Furthermore, Article 18 paragraph (3) UNTOC directly states several matters related to MLA as follows:

“Mutual Legal Assistance to be afforded in accordance with this article may be requested for any of the following purpose:

- a. Taking evidence or statements from persons;
- b. Effecting service of judicial documents;
- c. Executing searches and seizures, and freezing;
- d. Examining objects and sites;
- e. Providing information, evidentiary items and expert evacuations;
- f. Providing originals or certified copies of relevant documents and record, including government, bank, financial, corporate or business records;
- g. Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- h. Facilitating the voluntary appearance of persons in the requesting State Party;
- i. Any other type of assistance that is not contrary to the domestic law of the requested State Party.

Confiscation of Assets Proceeds from Corruption based on Law Number 7 of 2006 concerning Mutual Legal Assistance

Mutual Legal Assistance is a mandate from UNCAC where signatory countries are encouraged to have international cooperative relations to eradicate corruption¹⁸ and make national legal rules governing Mutual Legal Assistance. Mutual legal assistance is developed from the so-called 'Letters Rogatory', a comity-based system of requests for assistance with the taking of evidence, but mainly treaty based on today practice and covers a wide range of measures.¹⁹ To provide a legal basis for the Making and Implementation of Mutual Legal Assistance, Indonesia has regulated Mutual Legal Assistance through Law Number 1 of 2006 concerning Mutual Legal Assistance. Although it is not specifically aimed at handling corruption cases, this law is also the basis for

¹⁴ Article 46 Par. (1), United Nation Convention against Corruption.

¹⁵ Article 46 Par. (3), United Nation Convention against Corruption.

¹⁶ Article 52, United Nations Conventions of Against Corruption.

¹⁷ Article 55, United Nations Conventions of Against Corruption.

¹⁸ Article 42 Par. (2), United Nations Conventions of Against Corruption.

¹⁹ Robert Cryer, et.al. “An Introduction to International Criminal Law and Procedure”, Cambridge University Press: New York, 2010. p. 102.

implementing reciprocal legal assistance for corruption cases in Indonesia. This law also regulates the executing the inquiry of search warrant and seizure; the forfeiture of proceeds of crime; the recovery of pecuniary penalties in respect to the crime; and restraining of dealings in property, freezing of property that may be recovered or confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect to the crime.²⁰

During its development, Indonesia is recorded as having several Mutual Legal Assistance Agreements with several countries as follows:

- a. The Indonesia-Australia Agreement was signed in 1995 through Law Number 1 of 1999 concerning Ratification of the Agreement between the Republic of Indonesia and Australia Concerning Mutual Legal Assistance in Criminal Matters.
- b. Treaty on Extradition between Republic of Indonesia and the Republic of Korea by Law Number 42 Year 2007.
- c. Agreement Between the Government of The Republic of Indonesia and The Government of The Hong Kong Special Administrative Region of The People's Republic of China Concerning Mutual Legal Assistance in Criminal Matters with Law Number 3 Year 2012.
- d. The Agreement between Indonesia and the People's Republic of China regarding Mutual Assistance in Criminal Matters, July 24, 2000.
- e. Indonesia's Multilateral Agreement with the Government of Brunei Darussalam, the Kingdom of Cambodia, the Government of the Lao People's Democratic Republic, the Government of Malaysia, the Government of the Philippines, the Government of the Republic of Singapore, and the Government of the Socialist Republic of Vietnam on Mutual Assistance dated 29 November 2004.
- f. Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of Indonesia and the Swiss Confederation with Law Number 5 Year 2020.

The principle or principle of reciprocal legal aid in criminal matters embraced in the MLA Law is regulated as follows:²¹

- a. Mutual legal assistance in criminal matters can be carried out based on an agreement and if there is no agreement, then assistance can be provided on the basis of good relations.²²
- b. The law does not provide the power to carry out extradition, arrest or detention for the purpose of extradition, or handover of persons, transfer of prisoners, or transfer of cases.
- c. The law provides in detail regarding requests for mutual assistance in criminal matters from the Government of the Republic of Indonesia to the requested State and vice versa.
- d. The law provides a legal basis for the minister responsible in the field of law and human rights as an official in authority who acts as a coordinator in submitting requests for mutual assistance in criminal matters to foreign countries and in handling requests for mutual assistance in criminal matters from foreign countries.

²⁰ Article 3 Par. (2), Undang-Undang Nomor 1 Tahun 2006 tentang Bantuan Timbal Balik dalam Masalah Pidana.

²¹ A.A. Oka Mahendra, "Kerjasama Bantuan Timbal Balik dalam Pengendalian Hasil Korupsi", papers submitted at the Seminar "Sinergi Pemberantasan Korupsi: Peranan PPATK dan Tantangan Asset Recovery" in the context of PPATK's 4th birthday, Jakarta, April 4 2006.

²² Article 5, Undang-Undang Nomor 1 Tahun 2006 tentang Bantuan Timbal Balik dalam Masalah Pidana.

Based on the principles mentioned above, it can be seen that the main points of the MLA Law relating to confiscation and recovery of assets from criminal acts of corruption are as follows:

- a. Carry out requests for searches and confiscation (Article 3 Par. 2 Point f);
- b. Confiscation of proceeds from crime (Article 3 Par. 2 Point g);
- c. Prohibit transactions of wealth, freeze assets that can be released or confiscated, or which may be required to fulfil the fine imposed, in connection with a criminal act (Article 3 Par. 2 Point i);
- d. Seeking wealth that can be released, or which may be required to fulfil the fine sanction imposed in connection with a criminal act (Article 3 Par. 2 Point i);

Even so, the implementation of reciprocal legal aid cannot automatically be implemented, there are provisions that regulate the limitations of the implementation, including: (a) extradition or surrender of persons; (b) arrest or detention for the purpose of extradition or surrender of a person; (c) transfer of prisoners; (d) Case transfer.²³

Stages and Procedures for Requesting Assistance for Confiscation of Proceeds of Crime through MLA

To ensure that the process of requesting assistance for confiscation of the proceeds of corruption must first be carried out in the stages of asset recovery, such as tracking, freezing or blocking, and confiscation. At the tracking stage, tracing and gathering relevant evidence is very important so that the results of criminal acts of corruption which are hidden or stored in other countries can be identified, calculated so that further blocking or freezing can be carried out. In the Academic Paper on the Asset Confiscation Bill, tracking or tracing is defined as a series of actions to seek, request, obtain, and analyse information to find out or reveal the origin and existence of assets of a criminal act.²⁴

The next stage after the process of tracking and identifying assets resulting from criminal acts of corruption is blocking or freezing of assets. The MLA Law defines blocking as a temporary freezing of assets for the purposes of investigation, prosecution or trial in court with the aim of preventing them from being transferred or transferred so that certain or all people do not deal with assets obtained from criminal acts.²⁵

After the assets from the proceeds of corruption are blocked and frozen, the next step is to confiscate the assets. For the blocking or freezing and confiscation stages, the MLA Law has regulated requests for blocking or freezing of assets and confiscation as regulated in Article 16 which states:

“The Minister may convey the request for Assistance to Foreign States to issue the following orders:²⁶

- a. freezing;
- b. search warrant;
- c. seizure; or
- d. Other necessary orders in accordance with the provisions of laws and regulations in relation with criminal proceedings in Indonesia.”

²³ Article 4, Undang-Undang Nomor 1 Tahun 2006 tentang Bantuan Timbal Balik dalam Masalah Pidana.

²⁴ See: Academic Paper of the Asset Confiscation Bill.

²⁵ Article 1, Undang-Undang Nomor 1 Tahun 2006 tentang Bantuan Timbal Balik dalam Masalah Pidana.

²⁶ Article 16, Undang-Undang Nomor 1 Tahun 2006 tentang Bantuan Timbal Balik dalam Masalah Pidana.

If the Assets from the proceeds of corruption have been traced, identified and have been blocked or frozen and confiscated, the next stage is the confiscation process. Furthermore, after a series of stages have been carried out, efforts to request assistance for confiscation and recovery of assets can be submitted by the Minister to the Requested State either directly or using diplomatic channels. Especially for assistance related to assets resulting from criminal acts of corruption, requests for assistance can be submitted by the Chairman of the Corruption Eradication Commission.²⁷ To apply for Mutual Legal assistance, there are requirements that must be fulfilled as follows:

- a. identity of the requesting authority;
- b. a description of subject matter and importance of the investigation, prosecution or examination before the court pursuant to said request, as well as the name and functions of a competent authority conducting investigation, prosecution and judicial process;
- c. a summary of relevant facts except for the request for Assistance related with judicial documents;
- d. provisions of relevant laws, contents of articles, and criminal sanctions;
- e. a description of the Assistance requested and details of certain procedures applied for, including confidentiality;
- f. purpose of the request for Assistance; and
- g. Other requirements determined by the Requested State.

After the asset is confiscated, the next stage is the return of the asset, if the asset is outside the country, the repatriation of the asset is carried out based on the implementation of Mutual Legal Assistance between the countries concerned.

Flowchart 1.1 Process for Recovery of Stolen Assets²⁸



Source: Asset Recovery Handbook: A guide for Practitioners

²⁷ Article 9, Undang-Undang Nomor 1 Tahun 2006 tentang Bantuan Timbal Balik dalam Masalah Pidana.

²⁸ Jean-Pierre Brun, et al. “Asset recovery Handbook: A Guide for Practitioners”, World Bank, 2011. p. 6.

Obstacles of implementation Mutual Legal Assistance Agreement in Other Countries

Cooperation between countries regarding mutual legal assistance in criminal matters is not enough with just signing agreements, but also need to be implemented into national regulations. In countries that adopt dualistic system, where bilateral or multilateral agreements need to be converted into national legislation, this is because mutual legal assistance agreement often contains important requirements to carry out extradition requests or mutual legal assistance and also if the agreement is not implemented into national law, it can paralyze the international cooperation that has been agreed.²⁹ A legal basis is needed for the Government of the Republic of Indonesia as a guide in making agreements and implementing MLA from other countries.³⁰ The legal basis is generally in the form of legislation regulating principles or principles, requirements or procedures of MLA, and judicial proceedings.

- **Indonesia and Australia**

The signing of an extradition treaty between Indonesia and Australia which was adopted by Indonesia through Law No. 8/1994 became the root of the establishment of bilateral cooperative relations in the criminal sector. After the signing of the extradition agreement, Indonesia and Australia made another bilateral cooperation agreement in the criminal field, that is The Treaty between the Republic of Indonesia and Australia on Mutual Assistance in Criminal Matters, this agreement was signed on 27 October 1995, after four years, Indonesia just ratified the agreement. In 1999 through Law Number 1 of 1999 concerning the ratification of the Treaty between the Republic of Indonesia and Australia on Mutual Assistance in Criminal Matters. In the bilateral agreement, there are definitions regarding 35 violations of criminal law relating to crimes that fall within the jurisdiction of the treaty, these meanings are attached in the Treaty between the Republic of Indonesia and Australia on Mutual Assistance in Criminal Matters.

There is an important part in the bilateral agreement between the Republic of Indonesia and Australia regarding Mutual Legal Assistance in Criminal Matters, that is in article 4 regarding refusal of assistance, where in article 4 paragraph (1) Requested State shall refuse a request for assistance from the Requesting State if the request for assistance is related with prosecution or punishment of a person in connection with a case deemed by the Requesting State to be a crime of a political nature except for murder or attempted murder of the head of state or members of his family, or crimes under military law of the Requested State which do not constitute a violation of the usual criminal law of the Requested State, and if the request for assistance is related to the prosecution of a person for an offense for which the perpetrator has been acquitted or pardoned or has served a imposed sentence.

Furthermore, requests for assistance related to prosecuting or punishing a person for an offense that has been committed in the Requesting State can no longer be prosecuted for reasons of time lapse, death of the suspect, double jeopardy, or cannot be prosecuted again for other reasons, and if there are strong reasons to believe that a request for assistance has been made solely for the purpose of prosecuting or punishing the person because of the person's race, gender, religion, nationality or political opinion

²⁹ UNODC, "Practical Trends and Challenges in International Cooperation in Corruption Matters: Observations from the United Nations Convention against Corruption Implementation Review Mechanism", Review of the implementation of the United Nations Convention against Corruption, 2018. p.2

³⁰ Article 2 of Law No.6 of 2001 concerning the Law on Mutual Assistance in Criminal Matters

or that the person's position may be suspected of infringing on the basis of these reasons, and the Requested State is of the opinion that the request, if granted, will be detrimental to sovereignty, security, national interests or other essential interests.

On the other hand, the Requested State can also refuse an assistance proposed by The Requesting State³¹ prejudice to the safety of any person or place an undue burden on the resources of the country or demands relating to prosecution or punishment of a person for an offense punishable by death. Before refusing to grant a request for assistance, the Requested State must consider whether an assistance can be provided subject to the conditions it deems necessary, if the requesting country is asked to fulfil certain conditions, then the requesting country must fulfil those requirements.³² However, there is no article regarding dispute resolution between Indonesia and Australia in their Mutual Legal Assistance agreement.

There are several cases related to MLA between Indonesia and Australia, including the case of Adrian Kiki Ariawan, as the President Director of PT. Bank Surya who was sentenced to life imprisonment by the Central Jakarta High Court with *in absentia* decision No.71/PID/2003 /PT.DKI dated June 2, 2003. The imprisonment of life was the result of his conviction and proof that Adrian Kiki Ariawan had violated the provisions of Article 1 paragraph (1) sub a jo. Article 28 jo. Article 34 C Law Number 3 Year 1971 in conjunction with Article 55 paragraph (1) 1 e jo. Article 64 paragraph 1 of the Criminal Code jo. Law Number 31 Year 1999 jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. Adrian Kiki Ariawan's actions have cost the state Rp. 1,500,000,000,000, 00 (one trillion five hundred billion rupiah). However, after the verdict was handed, Adrian Kiki Ariawan fled to Australia so that an extradition request was issued to Australia in September 2005 with letter number M.IL.01.02-02.

In November 2008, the Australian Federal Police succeeded arresting and detaining Adrian Kiki Ariawan, but the implementation of the extradition of Adrian Kiki Ariawan is still on hold pending due to the trial process regarding the extradition concerned in Australia, because Australia allows someone to file an objection to the local court for extradition treatment against him. In this case, Indonesia must respect the procedures and laws contained in the Requested State. Until finally in December 2013, the High Court of Australia granted the extradition of the Indonesian government to Adrian Kiki Ariawan. Adrian Kiki Ariawan's extradition process cannot be separated from the role of the Attorney General's Office, the Indonesian Ministry of Law and Human Rights and Interpol in coordinating with each other. In February 2014 Adrian Kiki Ariawan arrived in Indonesia and was immediately detained at the Cipinang Penitentiary. Looking at this case, it can be concluded that the Mutual Legal Assistance Treaty strengthens cooperation between countries in the criminal field but cannot speed up the punishment process because it is necessary to wait for the legal process to request extradition refusal by criminals carried out in the requested state.

- Indonesia and Hong Kong

³¹ Article 4 paragraph (2) of the Bilateral Agreement between the Republic of Indonesia and Australia regarding Mutual Legal Assistance in Criminal Matters

³² Article 4 paragraph (3) of the Bilateral Agreement between the Republic of Indonesia and Australia on Mutual Legal Assistance in Criminal Matters

The MLA agreement between Indonesia and Hong Kong was signed by Indonesia and Hong Kong on April 3, 2008. In the Mutual Legal Assistance agreement between Indonesia and Hong Kong, there are significant differences when compared to the Mutual Legal Assistance agreement between Indonesia and other countries. This difference is contained in Article 1 regarding the obligation to surrender stipulates that the parties agree to submit to each other subject to the conditions stipulated by this agreement, and every person who is within the jurisdiction of the country is requested by the requesting state to be prosecuted or for prosecution. or the imposition of penalties for offenses set forth in Article 2. Furthermore, Article 2 of the Mutual Legal Assistance agreement between Indonesia and Hong Kong contains 44 types of crime that fall within the jurisdiction of the agreement, could be concluded that the types of crime on Mutual Legal Assistance agreement between Indonesia and Hong Kong are more than the types of crime on Mutual Legal Assistance agreement between Indonesia and Australia which only contains 35 types of crime that included in its jurisdiction.

The condition of Century Bank which was still severe even though it had received assistance from Bank Indonesia, forced Bank Indonesia to help back Century Bank, this led to the discussion of Century Bank being held with a meeting of the financial sector stability committee (KSSK) in November 2008, the results of the meeting determined the Century Bank as a failed bank with systemic impacts on 18 commercial banks and 5 regional banks.³³ On this basis, rescue of Century Bank is urgently needed, The Deposit Insurance Corporation (LPS) is appointed to handle the failure of Century Bank, the implementation of handling by the LPS is carried out by providing a bailout in the form of Temporary Equity Participation of 6.76 trillion rupiah. However, there were unhealthy banking practices as well as violations that were detrimental to Century Bank itself which were committed by bank managers, shareholders, and bank related parties regarding the bailout that was submitted to Century Bank.

In the end, it was proven that the violation of the bailout was committed by the owner of Century Bank. The Temporary Equity Participation in the form of a bailout which was misused was intended to cover the capital adequacy ratio (CAR). In the Century bank case, shareholders Rafat Ali and Hesam Al Warraq were involved in causing a loss of 3,115.9 billion rupiah. Furthermore, Robert Tantular, the owner of Century Bank, causing 3,068.89-billion-rupiah loss. On the other hand, Robert Tantular committed another violation, namely embezzling customer funds worth 1.298 trillion rupiah, and PT Antaboga Delta Sekuritas' customer fund fraud worth 1.4 trillion rupiah. The proceeds from the criminal acts committed by shares of Rafat Ali and Hesam Al Warraq and Robert Tantular have been transferred abroad, including to Hong Kong and England.

The Indonesian government is trying to return Century Bank assets from Hong Kong to Indonesia, the effort is carried out in coordination between the Ministry of Law and Human Rights and the Attorney General's Office to ask the Hong Kong authorities to freeze the assets, this is based on the MLA agreement that has been signed by Hong Kong and Indonesia. The freezing of Century Bank assets in Hong Kong was frozen in December 2010 through the Hong Kong High Court decision No. 2557/1010. Furthermore, the MLA agreement did not accelerate the process of disbursing Century Bank assets which had been frozen by the Hong Kong Government, and in 2012 the Hong Kong Department of Justice has permanently frozen Bank Century assets. The process of returning Century

³³ Herdi Sahrasad, "Century Gate: Refleksi Ekonomi-Politik Skandal Bank Century ", Freedom Foundation: Jakarta, 2009. p. 15

Bank assets in Hong Kong, namely the temporary freezing of Century Bank assets in the period 2010 to 2012, followed by a permanent freeze on Century Bank assets in 2014, however until now the assets owned by Century Bank in Hong Kong have not been returned to Indonesia.

- Indonesia with The People's Republic of China

In an effort to expedite the investigation of a criminal act abroad, Indonesia also entered into an MLA agreement with The People's Republic of China, this agreement was signed by Indonesia and The People's Republic of China on July 24, 2000 in Jakarta, and ratified by Indonesia with a Law Law 8/2006 on Treaty Between The Republic of Indonesia and The People's Republic of China on Mutual Legal Assistance in Criminal Matters. The MLA agreement does not contain a list of crimes as contained in Indonesia MLA agreement with Australia and Indonesia with Hong Kong, it only states that violations of criminal law are any acts or omissions which constitute crimes under the respective national laws of the parties. The Central Authority of The People's Republic of China is The Supreme People's Procuratorate in the context of dealing with corruption, and the Ministry of Justice in certain ordinary cases³⁴

- Indonesia and Switzerland

On February 4, 2019 in Bern, Switzerland then signed a mutual legal assistance agreement in Criminal Matters between the Government of the Republic of Indonesia and the Swiss Confederation that is Treaty on Mutual Legal Assistance in Criminal Matters Between The Republic of Indonesia and The Swiss Confederation by Yasonna H. Laoly (Minister of Law and Human Rights of the Republic of Indonesia) and Karin Keller-Sutter (Head of Justice and Swiss Federal Police), which was ratified by Indonesia through Law No.5/2020. The signing of the MLA agreement between Switzerland and Indonesia is a form of achievement, this is because Indonesia is the first Asian country to enter into an MLA agreement with Switzerland, and the signing is also an extraordinary achievement of mutual assistance in criminal matters as well as a history of successful diplomacy which is very important. This is based on the fact that Switzerland is the largest financial centre in Europe and Switzerland has long been known as a country whose banking system is very amicable. strict.³⁵

In the MLA Agreement between Indonesia and Switzerland, there is a scope of assistance that is divided into three parts, namely assistance to accelerate the criminal legal process in the Requesting State, and requests for mutual legal assistance relating to acts or omissions made prior to the entry into force of this Agreement, as well as in matters of the broadest criminal sanction relating to a fiscal crime in accordance with the national law of each Party. In the MLA agreement between Switzerland and Indonesia, the assistance of the parties for the acceleration of the criminal legal process in the Requesting State consists of several stages, namely: taking testimony or other information on a criminal act, delivery of goods, documents, notes and proof of delivery of goods and assets. for the purpose of confiscation or return, provision of information, body and property searches, tracking and identification of people and property including

³⁴ Darmono, " Ekstradisi Terpidana Kasus Korupsi Dalam Rangka Penegakan Hukum Tindak Pidana Korupsi", *Lex Jurnalica: Jurnal Universitas Esa Unggul*, Volume 9, No. 3, 2012. p. 140

³⁵ Puteri Hikmawati, "Implikasi Penandatanganan Perjanjian Bantuan Timbal Balik Antara Indonesia Dan Swiss Terhadap Pemberantasan Tindak Pidana Korupsi Di Indonesia", *Bidang Hukum Info Singkat Kajian Singkat Terhadap Isu Aktual dan Strategis: Pusat Penelitian Badan Keahlian DPR RI Vol. XI, No.5, 2019. p. 2*

to inspect goods and places, search, freeze, confiscate and seize the proceeds and means of crime, convey documents, present detained persons to interrogate or confront related crimes, invite witnesses and experts to attend and give testimony in the Requesting State, and other assistance in accordance with the objectives of this agreement which is mutually agreed upon by the parties to the extent that it does not conflict with the laws of the Requested State.

Establishing MLA cooperation with Switzerland is very important, Switzerland is known as a tax haven country when Switzerland greatly increased its level of banking secrecy in 1934 by placing the obligation to keep this secret under the protection of criminal law, then, if there is an action that involves disclosing information to several authority regarding the customer's bank account information, that action is a criminal. On this basis, the MLA agreement between Switzerland and Indonesia regulates a reciprocal legal aid request mechanism, which includes regulating coercive measures, consisting of searches of bodies and property, confiscation of evidence including the means used to commit criminal acts, goods and assets that are the proceeds of the crime, any action aimed at disclosing secrets protected by the criminal laws of the Requested State, as well as other acts involving coercion in accordance with the procedural laws of the Requested State.

Money from corruption in Indonesia is often flown to Switzerland, as in the case of the Global bank which misused Bank Indonesia Liquidity Assistance (BLBI). Owner and President Director of Bank Global, Irawan Salim et al. are suspected of having committed a criminal act of corruption whose case is in the process of being investigated but Irawan Salim et al fled abroad before they were arrested and processed legally, until now, Irwan Salim is still in the search stage Interpol. The collaboration between the Indonesian government and Interpol resulted in the finding that Irwan Salim had a bank account in Switzerland. To pursue the results of the corruption of Irwan Salim who was in Switzerland, the Indonesian government submitted an application for the MLA agreement to the Swiss government to freeze the account containing 9.9 million USD owned by Irwan Salim.³⁶ However, the Swiss government does not recognize *in absentia* judgement in their court ruling, considering that the suspects are not certain when they can be arrested and tried in accordance with the applicable legal regulations in Indonesia. At that time, the Indonesian government was waiting for the results of the court decision on the money laundering committed by Irwan Salim, and if it had been decided, Indonesia would submit a request for an MLA agreement to seize Irawan Salim's money in his bank account in this case in Switzerland.

Another case of funds from corruption in Indonesia being rushed to Switzerland is the case of ECW Neloe as Director of Bank Mandiri who granted the loan application for five companies without going through the procedures and requirements according to the provisions made by Bank Mandiri which resulting in the non-repayment of the loan that is provided by Bank Mandiri of the five company according to the specified time. For this act, ECW Neloe is suspected of having misused his position to the detriment of state finances and is suspected of committing a criminal act of corruption in the provision of Bank Mandiri loans to five creditor companies. When the case was in legal proceedings at the South Jakarta District Court, it was discovered through the cooperation of the

³⁶ Ridwan Arifin, et.al, "Upaya Pengembalian Aset Korupsi Yang Berada Di Luar Negeri (Asset Recovery) Dalam Penegakan Hukum Pemberantasan Korupsi Di Indonesia", Indonesian Journal of Criminal Law Studies, Volume 1, No.1, 2016. p. 120

Financial Intelligence Unit that ICW Neloe had bank accounts in Singapore and Switzerland. Based on this information, the Government of Indonesia submitted an MLA request to the Swiss Government to pay E.C.W Neloe's bank account and requested information and documents held by the bank for the process of the Money Laundering case in Indonesia.

Based on this request, Neloe's account in Switzerland was frozen. However, the information and documents requested from the Swiss bank have not been fulfilled. The process of the ECW Neloe corruption case at the District Court level, through the decision number 2068/Pid B/2005/PN South Jakarta, ECW Neloe was found not guilty of causing losses to state finances. Then the attorney general made an appeal to the Supreme Court. The Supreme Court judged the case itself and decided through the Supreme Court decision number 1144/K/Pid/2006 that ECW Neloe had sufficient evidence of committing a criminal act of corruption.³⁷ For this decision ECW Neloe was sentenced to 10 years in prison and a fine of 500-million-rupiah subsidiary to six months. Based on the Supreme Court's decision, Indonesia, in this case the Attorney General's Office, submitted a second MLA request to Switzerland for the confiscation of Neloe's money in Switzerland which was alleged to have originated from the proceeds of corruption in Indonesia. However, until now the assets that ECW Neloe withdrew have not been able to be withdrawn to Indonesia.

- **Indonesia and ASEAN**

Treaty on Mutual Legal Assistance in Criminal Matters of Southeast Asian Countries is a mutual cooperation agreement in the handling and eradication of transnational crime between ASEAN member countries (Association of Southeast Asian Nations), which consists of Indonesia, Brunei Darussalam, Singapore, Thailand, Philippines, Malaysia, Vietnam, Laos, Myanmar and Cambodia. The multilateral MLA agreement is a cooperation between countries in combating transnational crimes, which are particularly related to corruption and money laundering crimes. However, the agreement still has legal loopholes that have the potential to make the agreement ineffective, namely that the return of assets resulting from criminal acts to the requesting country is not mandatory, The Requesting State is required to comply with the national laws of the Requested State and property confiscated or confiscated must comply with these terms and the conditions may be increased unless otherwise agreed in each specific case.

4. Conclusion

The main points of the MLA Law relating to confiscation and recovery of assets from criminal acts of corruption are to carry out requests for searches and confiscation, confiscation of proceeds from crime, prohibit transactions of wealth, freeze assets that can be released or confiscated, or which may be required to fulfil the fine imposed, in connection with a criminal act, seeking wealth that can be released, or which may be required to fulfil the fine sanction imposed in connection with a criminal act. Stages and Procedures for Requesting Assistance for Confiscation of Proceeds of Crime through MLA are collecting intelligence and evidence and Asset, securing the assets, court process), enforcing orders.

During its development, Indonesia is recorded as having several Mutual Legal Assistance Agreements with several countries. There are Australia, Republic of Korea,

³⁷ Rizki Agung F, "Konsep Kerugian Perekonomian Negara Dalam Undangundang Tindak Pidana Korupsi", *Jurist-Diction*, Vol. 3 No.2, 2020. p. 675

Hongkong, The People's Republic of China, ASEAN and Switzerland. Unfortunately, the implementation of reciprocal legal aid on MLA cannot automatically be implemented, there are provisions that regulate the limitations of the implementation, including extradition or surrender of persons, arrest or detention for the purpose of extradition or surrender of a person, transfer of prisoners, and Case transfer.

Cooperation between countries regarding mutual legal assistance in criminal matters is not enough with just signing agreements, but also need to be implemented into national regulations. These are some obstacles of implementation Mutual Legal Assistance Agreement between Indonesia and other countries. Such as, the Requesting State cannot ask to punish a person in regarding as a crime of a political nature, and the perpetrator of the crime who has served the sentence. The MLA does not contain comprehensive provisions in the prosecution of criminal acts. The agreement still has legal loopholes that have the potential to make the agreement ineffective.

We recommend to conduct deeper diplomacy between countries, plan and formulate a more comprehensive MLA so that regulation and enforcement of mutual assistance in handling corruption and asset recovery can be optimized.

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