

Mutual Legal Assistance International Agreement in Eradicating Transnational Crime

Andika Jinaratana¹, Yofi Permatasari², Jean Claudia³

^{1,2,3} Universitas Tarumanagara, Indonesia

Email: andika.205210039@stu.untar.ac.id, jean.205210132@stu.untar.ac.id,
yofi.205210067@stu.untar.ac.id

* Correspondence: andika.205210039@stu.untar.ac.id

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ABSTRACT

Transnational crime can be said to be one of the threats that has quite a big impact on Indonesia's security. So that there are no more obstacles in eradicating transnational crime, cooperation between countries is needed through Mutual Legal Assistance (MLA) agreements. The application of mutual legal assistance is implemented to increase the effectiveness of cooperation in eradicating transnational crimes. The existence of an international Mutual Legal Assistance agreement that functions to carry out cooperation between countries, which includes investigations and examinations at trials until the implementation of court decisions, can complement the enforcement of extradition agreements.

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Introduction

At this time, no country can stand alone without relations with other countries. Each country has advantages and disadvantages or limitations, so that dependence arises which requires cooperative relations between countries. No country can protect itself without international relations with other countries. Therefore, international relations have an important and influential position in the sustainability of a country. With the existence of international relations, a problem between countries will be resolved or it can be an effort to eradicate transnational crime (Qc, 2019).

Transnational crime can be said to be one of the threats that has quite a big impact on Indonesia's security (Diantha, 2020). This huge impact is of course very detrimental to the state in several aspects such as the economy, law, culture, and a sense of security in society so that the transnational crimes that occur are increasingly causing concern to the community. This transnational crime must be handled seriously, because transnational crime is not mere nonsense for Indonesia. The structure and characteristics of international crime are usually organized so that it is not easy to dismantle it only by legal investigations by law enforcement officers. The cooperation of all domestic and foreign components is needed in dealing with this international crime case (Christianti, 2022). Within the country, coordination is needed between law enforcement agencies such as the police, immigration, finance department, prosecutors, customs and other components that can deal with international crimes (STARKE, n.d.).

The perpetrators of transnational crimes often save the proceeds of their crimes and then take them out of the country. This is done so that the assets they stole are not taken back by the authorities. Therefore, many countries have entered into agreements so

that they can speed up the process of arresting transnational crime perpetrators who have harmed the aggrieved parties (Latifah, 2017).

International agreements are one of the legal efforts to carry out a collaboration with other countries, for example, such as diplomatic relations and combating international crimes. According to (Mauna, 2001), the definition of an international agreement is a legal provision concerning the will and agreement of the state or other international law subjects, where the provisions are regulated in international law so as to give rise to binding legal consequences for the parties who make it. One of the international agreements in the form of instruments used to deal with transnational crimes is called the mutual legal assistance system or MLA (Mutual Legal Assistance). MLA is an instrument used to deal with the problem of international crimes. With this cooperation through the MLA agreement, it can prevent and eradicate transnational crimes, such as money laundering, corruption, and others (Kusumaatmadja & Agoes, 2021).

In Law Number 1 of 2006, MLA's actions include searches and seizures, investigations, identifying and searching for people, confiscating, and freezing assets. However, in Law Number 1 of 2006 article 4 it is stated that the provisions in the Law do not give the authority to hold:

- Extradition or surrender of persons;
- Detention or arrest with intent to extradite or surrender persons;
- Transfer of convicts;
- Transfer of matter.

It can be said that the state cannot ask the perpetrators of crimes to be handed over to be tried in the country where the perpetrators committed these crimes (Sefriani, 2016). This is the difference between extradition and MLA. If a country has agreed to implement an MLA agreement, then the bound country may not refuse if one of the countries asks for legal assistance. Referring to Law Number 1 of 2006 article 5 which states "that legal assistance can be provided based on an agreement." However, if there is no MLA agreement, legal assistance can be provided on the basis of good relations (principle of reciprocity).

The formulation of the problem in this study is How is the Mutual Legal Assistance (MLA) system implemented in eradicating transnational crime? What are the basics of Mutual Legal Assistance (MLA) mutual legal assistance?

Research methods

The research method used in this research is literature study which is a study that focuses on the analysis of written materials based on their context. The written materials used in this study were in the form of manuscripts, articles, and journals. This study also uses a normative juridical method that refers to positive law, namely the provisions of the applicable laws and regulations, especially Law No. 1 of 2006 concerning mutual legal assistance.

This study uses the nature of descriptive research which prioritizes an explanation of the object of research. Descriptive research itself means a form of research nature that aims to systematically describe an object of research. This descriptive research was conducted with the aim of getting an overview of the problems being discussed.

The types of data used in this research are primary and secondary data types. The type of primary data is the type of data that has legally binding power, namely laws and regulations. While the type of secondary data is data that includes official documents such

as legal books, journals, or related articles as well as research results related to the issues being discussed.

In this study used qualitative data analysis which is a way to explain the problem object being studied. The purpose of this qualitative data analysis is to describe the problems in this study so that they are clearer and more complete. Several steps in qualitative data analysis are collecting data to be examined, presenting data in a systematic and complete and easy to understand way.

Results and Discussions

A. How is the Mutual Legal Assistance agreement applied in eradicating transnational crimes?

Transnational crime is a crime that is defined as an act that is prohibited by international law regulated in international conventions or customs and has a special characteristic, namely the application of universal principles to perpetrators of transnational crimes. The universal principle can be said to be a principle that contains Indonesian criminal law regulations that apply to the existence of a crime whether committed within the country or abroad and also the perpetrators are Indonesian citizens or foreign citizens. The existence of this universal principle is also to protect international interests and the implementation of world law or world order (Bassiouni, 2013). With the enactment of this universal principle, every country has the right and authority to arrest, detain and prosecute the perpetrators of transnational crimes. Transnational crime has several elements, namely:

1. The state is obliged to apply international law into national law or commit international crimes into national criminal law. In this case, if a transnational crime occurs, the state's obligation is to combine 2 types of law, namely international law and national criminal law and also oblige states to punish the perpetrators of transnational crimes.
2. The obligation of the state to cooperate in eradicating transnational crime. Cooperation in eradicating transnational crime is very important because by making cooperation agreements between countries to eradicate transnational crime, it can overcome the existence of transnational crimes and make it easier for the state to handle the process of investigation, prosecution and examination in court hearings on a transnational crime problem.
3. There is enforcement of transnational crimes that can be carried out through national courts or international courts. Based on this statement, it can be seen that crimes committed beyond the borders of the state can be enforced and tried through national courts and international courts in accordance with the agreements agreed upon by the state.

Initially, law enforcement against transnational crimes could be carried out through extradition. Basically, extradition can be interpreted as the basis of an agreement in a country in handing over a suspect to another country or someone who has been convicted as a result of a violation of the criminal law of the country that has the authority to try him. According to article 1 of the UN Extradition Model Agreement (PME), extradition is an agreement of the participants, namely one country with another in an agreement that has been mutually agreed upon to surrender a person to the state on the basis of a request based on the provisions of the agreement and the surrender to the

country requesting surrender, for the purpose of prosecuting crimes that have been committed.

However, extradition is less effective for countries because extradition agreements are only made as an effort to arrest suspects whose jurisdiction is in other countries so that countries enter into mutual legal agreements or Mutual Legal Assistance in an effort to eradicate transnational crimes. The application of Mutual Legal Assistance is implemented to increase the effectiveness of cooperation in eradicating transnational crimes. The existence of an international Mutual Legal Assistance agreement that functions to carry out cooperation between countries which includes investigations, investigations and examinations at trials until the implementation of court decisions, can complement the enforcement of extradition agreements.

The background to the formation of mutual legal assistance or MLA was the existence of differences in the legal systems between the two countries which could hinder the process of resolving a transnational crime. International agreements through mutual legal assistance are in line with the efforts of the international community in tackling transnational crime. The application of mutual legal assistance is carried out by Indonesia by issuing a legal basis for the application of Mutual Legal Assistance, namely Law No. 1 of 2006 concerning mutual legal assistance in criminal matters. Based on article 5 of Law No. 1 of 2006 concerning mutual legal assistance, it states that assistance can be carried out based on the existence of an agreement, but if there is no agreement yet, assistance can be carried out based on the principle of reciprocity.

The principle of reciprocity is one of the principles which has the principle that a country that is requested for reciprocal legal assistance will also receive guarantees from the requesting party to be given the same assistance if needed. This principle of reciprocity is also the basis for many countries to enter into international cooperation agreements and is also a principle that is recognized internationally. The application of mutual legal assistance or Mutual Legal Assistance in eradicating transnational crimes has types of assistance based on Law No. 1 of 2006 concerning mutual legal assistance, namely:

1. Help to find or identify people. Based on this, the Ministry of Law and Human Rights can submit requests to other countries to identify people who are believed to be currently in that country who are reasonably suspected of having a relationship with the investigation, prosecution and examination before the trial of Indonesian courts and can provide other assistance in the investigation, prosecution and examination of the judge.
2. Help to get evidence. In this case, if it is believed that there is evidence related to an investigation, prosecution, and examination before a court in Indonesia, the Menkumham can submit a request for assistance to a foreign country to seek to take a statement in a foreign country or submit documents or other evidence in that country. foreign.
3. Assistance to strive for presence of people in Indonesia. Menkumham can submit requests for assistance to foreign countries to seek the presence of people in Indonesia to provide information, documents, other evidence, or provide other assistance in investigations, prosecutions, and examinations in court hearings.
4. Assistance for requests for the issuance of warrants in foreign countries in obtaining evidence. Menkumham can submit a request for assistance to a foreign country to issue a warrant for blocking, search, confiscation, or other necessary steps in

accordance with laws and regulations regarding the examination of criminal cases in Indonesia to obtain evidence in a foreign country.

5. Assistance to follow up court decisions. Based on a court decision that has permanent legal force, the Attorney General may submit a request to the Menkumham to submit a request for assistance to the requested country to follow up on the relevant court decision in the requested country. The court's decision can be in the form of confiscation of confiscated goods, fines, or payment of replacement money.

Based on this, international agreements through Mutual Legal Assistance as an effort to eradicate transnational crimes committed between countries, one of which is Indonesia entering into international agreements with other countries, can be used as a legal basis to be able to carry out legal assistance in the stages of investigation, prosecution and pre-examination. court proceedings as well as in the implementation of court decisions related to tracing, blocking, freezing, confiscation, and confiscation of proceeds from transnational crime facilities.

Whereas mutual legal assistance is a mechanism to provide legal assistance based on formal legal basis. When a country submits a request for assistance to another country in the context of an asset freeze or to obtain evidence to prosecute or issue a suspension and confiscation order, the request for assistance must be prepared in advance with a formal letter of legal assistance containing a list of statements or actions to be taken. and must be sent to the competent authority of the country where the request is made. it must also be based on the existence of an international agreement.

B. What are the basics of Mutual Legal Assistance (MLA) mutual legal assistance?

As one of the main things in efforts to eradicate transnational crime, the countries concerned really need a legal basis or enter into an agreement so that the implementation of mutual legal assistance can run smoothly. Various international collaborations have also been carried out by Indonesia as a form of its seriousness in fighting transnational crime, both from entering into MLA agreements with one country or with many countries at once. In general, bilateral agreements (2 countries) are considered easier to implement than multilateral agreements (3 or more countries). The legal basis for the Mutual Legal Assistance (MLA) agreement itself, as we all know, was born from the agreement of each of the relevant countries. On the topic of this discussion we will discuss "What are the basics of implementing Mutual Legal Assistance (MLA)?" Until now Indonesia has entered into several MLA agreements with other countries as below;

- a. Australia, ratified by Law no. 1 of 1999
- b. Hong Kong SAR, ratified by Law no. 3 of 2012
- c. PRC, ratified by Law no. 8 of 2006
- d. South Korea, ratified by Law No. 8 of 2014
- e. India, ratified by Law no. 9 of 2014
- f. Viet Nam, ratified by Law no. 13 of 2015
- g. United Arab Emirates, ratified by Law no. 6 of 2019
- h. Iran, ratified by Law no. 10 of 2019
- i. Switzerland, ratified by Law no. 5 of 2020
- j. Russia, still in the process of ratification.

In addition to the bilateral agreements mentioned above, Indonesia has also signed several multilateral MLA agreements as below;

1. ASEAN Declaration on Transnational Crimes on 20 December 1997
2. Cooperation agreement between ASEAN countries (ASEAN Mutual Legal Assistance Treaty), ratified by Law no. 15/2008.

The Central Authority or Central Authority is an institution formed based on the mandate of international conventions and bilateral agreements to be able to facilitate the implementation of the process of international Mutual Legal Assistance (MLA). Based on the manual published by UNODC (United Nations Office on Drugs and Crime) entitled Manual on Mutual Legal Assistance and Extradition it states that:

“A central authority is an administrative entity and as such can be created simply by placing it into the organizational chart of whatever Government agency or department is responsible for international assistance and justice matters. A “central” authority should be just that, a central repository of expertise and information where all international assistance matters pertaining to a State are acted upon. This allows for a consistency of response and a focusing of effort that will benefit the State, whether it is requesting or responding to a request. Where the central authority is placed, what its defined role is in relation to other agencies or departments that are tasked with justice matters and who staffs it, however, are factors that will decide whether the central authority is simply a response to article 13 of the Organized Crime Convention or a major facilitator of international assistance as envisioned by the Convention.”

The Central Authority Institution or Central Authority is very important in terms of implementing Mutual Legal Assistance (MLA) because it has the duty to accept submissions for legal assistance or submit mutual legal assistance to other countries that already have agreements. The submission process to the central authority until it is sent to other countries is also divided into several stages as below;

- Submission of requests for mutual assistance to the central authority
- Review and design a letter of request for mutual assistance
- Delivery, coordination and monitoring of reciprocal assistance with requested countries
- Fulfillment of aid and provide feedback to assisting countries.

If Indonesia is in a position as the requested country, it will be divided into several stages as below;

- Acceptance of a request for mutual assistance from the central authority of the requesting country
- Review requests for mutual assistance
- Coordination with Indonesian law enforcement agencies and submission of responses to requesting countries
- Implementation monitoring, and feedback.

Some of the things mentioned above are the basis for the real implementation of Mutual Legal Assistance (MLA) agreements and of course cannot be separated from the role of each country that enters into agreements to eradicate transnational crime.

Conclusion

Transnational crimes are crimes that are prohibited by international law. Initially, law enforcement against transnational crimes could be carried out through extradition. However, the enforcement of extradition was less effective so countries entered into

mutual legal agreements or Mutual Legal Assistance in an effort to eradicate transnational crime. International agreements through mutual legal assistance are in line with the efforts of the international community in tackling transnational crime. Based on article 5 of Law No. 1 of 2006 concerning mutual legal assistance, it states that assistance can be carried out based on the existence of an agreement, but if there is no agreement yet, assistance can be carried out based on the principle of reciprocity. Mutual Legal Assistance in eradicating transnational crimes has types of assistance based on Law No. 1 of 2006 concerning mutual legal assistance, namely Assistance to search for or identify people, Assistance to obtain evidence, Assistance for requests for issuance of warrants in foreign countries in obtaining evidence, and so on.

The legal basis for the Mutual Legal Assistance (MLA) agreement itself, as we all know, was born from the agreement of each of the relevant countries. The Central Authority Institution or Central Authority is very important in terms of implementing Mutual Legal Assistance (MLA) because it has the duty to accept submissions for legal assistance or submit mutual legal assistance to other countries that already have agreements.

With the establishment of international mutual legal agreements between countries, it certainly requires the consistency of the countries that make agreements and it is considered necessary to create an international institution to regulate and supervise the implementation of Mutual Legal Assistance (MLA) agreements throughout the world, both bilaterally and multilaterally. These international institutions are intended to create legal certainty for each country and of course facilitate the making of reciprocal legal agreements. based on the research conducted, it is also necessary to develop other MLAs in order to realize the value of eradicating transnational crime.

References

- Bassiouni, M. C. (2013). Introduction To International Criminal Law. In *Introduction To International Criminal Law, 2nd Revised Edition*. Brill Nijhoff.
- Christianti, D. W. (2022). *Hukum Pidana Internasional*. Sinar Grafika.
- Diantha, I. M. P. (2020). *Hukum Pidana Transnasional*. Jakarta: Kencana.
- Kusumaatmadja, M., & Agoes, E. R. (2021). *Pengantar Hukum Internasional*. Penerbit Alumni.
- Latifah, M. (2017). Penunjukan Otoritas Pusat Dalam Bantuan Timbal Balik Pidana Di Indonesia (The Appointment Of The Central Authorities In Mutual Legal Assistance In Criminal In Indonesia). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 7(1), 53–69.
- Mauna, B. (2001). *Hukum Internasional: Pengertian Peranana Dan Fungsi Dalam Era Dinamika Global*. Alumni.
- Qc, M. N. S. (2019). *Hukum Internasional*. Nusamedia.
- Sefriani, P. H. I. (2016). Dalam Hubungan Internasional Kontemporer. *Jakarta: Rajawali Pers*, 189.
- Starke, J. G. (N.D.). *An Introduction To International Law*. Heinonline.
- Criminal Law 1 Revised Edition. Semarang. Sudarto Foundation Prof. Sudarto. (2018). P. 44-45
- The Model Extradition Agreement (MPE) is a manual or guideline for UN member states

when they are going to make extradition treaties with other countries. This model was endorsed by the UN General Assembly with resolution 45/116, 1990, and amended by Resolution 52/88, 1997.

State, Cross Law. Mutual Legal Assistance in Criminal Matters (MLA): A Cross-Country Law Enforcement Cooperation Mechanism.

Peraturan Perundang-Undangan

pasal 11 undang-undang no 1 tahun 2006 tentang bantuan hukum timbal balik

pasal 12 undang-undang no 1 tahun 2006 tentang bantuan hukum timbal balik

pasal 14 undang-undang no 1 tahun 2006 tentang bantuan hukum timbal balik

pasal 19 dan pasal 20 undang-undang no 1 tahun 2006 tentang bantuan hukum timbal balik

pasal 22 dan pasal 23 undang-undang no 1 tahun 2006 tentang bantuan hukum timbal balik