



# *Utilization of Mutual Legal Assistance as a Cooperation Framework for Confiscation of Assets Proceeds of Criminal Acts Abroad*

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**Abstract**—Indonesia confronts a multitude of transnational offenses that persistently expand, including human trafficking, human smuggling, corruption, and money laundering. Law enforcement authorities often encounter criminals who deliberately obscure the origin of their income in order to avoid being detected. Money laundering poses a significant risk to both economic and social stability, in accordance with the principles of Pancasila and the 1945 Constitution. The law pertaining to the seizure of assets derived from illegal activities is a crucial legal matter. Despite the presence of multiple mechanisms, such as collaboration between law enforcement authorities and reciprocal legal assistance, this rule has demonstrated ineffectiveness. The implementation of Law Number 8 of 2010 on the Eradication of Money Laundering and Law Number 1 of 2006 about Mutual Legal Assistance regularly encounters bureaucratic and technical challenges. This study employs normative legal methodologies, including the analysis of statutes, case law, and comparative techniques. This study examines the jurisdiction of the Indonesian Prosecutor's Office in asset seizure, both within the country and abroad, and investigates the application of Mutual Legal Assistance (MLA) in this specific context. The findings indicate that although there is a robust legislative structure in place, the intricate bureaucracy and insufficient resources frequently impeded the execution of the framework. Hence, it is imperative to enhance laws, bolster international collaboration, and foster the development of human resource capacity. The research findings indicate that enhancing the authority of the Indonesian Prosecutor's Office and streamlining bureaucratic procedures are crucial for ensuring the efficacy of asset confiscation. In order to enhance the process of recovering assets, it is imperative that we persist in improving current legislation and addressing any hindrances that may arise. Ultimately, achieving effective asset confiscation through MLA necessitates significant advancements in rules and bureaucracy. These improvements are crucial for combating international crime and ensuring the preservation of economic and social stability.

**Keywords**— Confiscation of Assets; Mutual Legal Assistance; Transnational Crime.

## I. INTRODUCTION

Indonesia has specifically prioritized addressing a range of transnational offenses, such as human trafficking, human smuggling, corruption, money laundering, illegal logging and wildlife trafficking, illegal fishing, illicit trade of cultural artifacts, and narcotics and drug offenses, including the trafficking of illegal drugs and their chemical components.[1] Criminals frequently attempt to conceal or alter the source of their illicitly acquired income.[2] The objective is to render these assets highly elusive for law enforcement authorities, enabling their unrestricted utilization for both lawful and unlawful endeavors. Money laundering poses significant threats to the integrity and stability of monetary and financial institutions, as well as the social, national, and state order in line with the ideals of Pancasila and the 1945 Constitution of the Republic of Indonesia.

One of the key legal concerns is the lack of clear and convincing legislation addressing the seizure of assets obtained through criminal activities.[3] Despite Indonesia's implementation of multiple methods,

including interagency cooperation, extradition, and mutual legal help in criminal situations, the outcomes of asset confiscation endeavors remain suboptimal.[4] The Prevention and Eradication of the Crime of Money Laundering Law (UU TPPU) of 2010 and the Crime of Money Laundering Law (amended by Law No. 25 of 2003) of 2002 govern a range of acts and procedures connected to money laundering. Nevertheless, the practical application of this technology frequently encounters technical and logistical challenges.[5] In addition to that, Law No. 1 of 2006, which pertains to Mutual help in Criminal situations (MLA), governs the provision of help between countries in criminal situations, encompassing extradition and the seizure of assets located overseas. Nevertheless, it is imperative to acknowledge and rectify the constraints associated with the execution of this legislation. Government Regulation Number 43 of 2015 provides guidelines for coordinating, monitoring, and evaluating the efforts to prevent and eliminate money laundering crimes. It aims to facilitate collaboration among different agencies in tackling this issue. Nevertheless, further enhancements are required in order to attain optimal outcomes in the implementation process.

The primary impediments to the seizure of assets derived from illicit activities encompass a convoluted administrative framework, insufficient resources, disparities in global legal systems, and incomplete regulatory frameworks.[6] Nevertheless, the suggested enhancements have the capacity to bring about substantial transformation. Some suggested enhancements include refining regulations to provide clear definitions and procedures for asset confiscation, bolstering international collaboration through more efficient bilateral and multilateral agreements, enhancing human resource capacity and technological capabilities for tracing assets acquired through criminal activities, and conducting outreach and education programs for law enforcement officials and the general public to emphasize the significance of seizing properties obtained through criminal acts.[7] These initiatives aim to improve the effectiveness and efficiency of Indonesia's asset confiscation activities, which will help eliminate transnational crime and maintain the country's economic and financial stability.

Indonesian law enforcement has made persistent efforts and partnered with both domestic and foreign partners to seize assets obtained from illicit activities, both within the country and overseas. The Indonesian Prosecutor's Office has been resolute in its efforts to repatriate assets obtained from criminal activities abroad. They have employed both direct and indirect cooperation methods, as well as utilized asset tracing networks like the Asset Recovery Interagency Network—Asia Pacific (ARIN-AP) and the Camden Asset Recovery Inter-Agency Network (CARIN) Manual.[8] Law enforcement agencies directly collaborate, whereas governments indirectly collaborate through official bureaucratic channels, following specific procedures, terms, and conditions such as extradition and reciprocal legal help in criminal proceedings. Despite the existence of these three mechanisms, efforts to seize assets are still not optimal. An barrier arises from the lack of clarity in the legislation pertaining to the confiscation of assets derived from illegal activities.

## II. LITERATURE REVIEW

### A. Definition of Mutual Legal Assistance

The word "Mutual Legal Assistance" (mutual assistance in criminal cases) is not explicitly defined in Law Number 1 of 2006 respecting Mutual Assistance in Criminal cases. Article 3, paragraph 1 of Law of the Republic of Indonesia Number 1 of 2006 addresses the concept of reciprocal legal help, which is also referred to as mutual assistance in criminal issues in Indonesia. The provisions read as follows:

*"Mutual assistance in criminal matters, hereinafter referred to as assistance, is a request for assistance in connection with investigations, prosecutions, and trials in court in accordance with the provisions of the laws and regulations of the requested state."*

A parallel comprehension can be discerned: mutual legal assistance is a modality of collaboration among nations, primarily aimed at facilitating the investigation or prosecution of criminal acts.[7] According to Article 3, paragraph (1), mutual aid encompasses requests for help with investigations, prosecutions, and court examinations, as specified by the laws and regulations of the country being asked for assistance. This legislation establishes a legitimate foundation for Indonesia to engage in international collaboration when dealing with criminal matters. MLA is a mechanism through which countries collaborate to seek support in the investigation or prosecution of criminal activities. It allows law enforcement agencies in one country to acquire essential evidence or information from another country by adhering to the relevant laws and procedures of the requested country.[9] Based on the concept of international cooperation in law enforcement, it is not possible for a single country to successfully address crimes, particularly those that occur across national borders. Therefore, it is imperative for countries to collaborate through agreements and institutions like Mutual Legal Assistance (MLA) in order to guarantee efficient law enforcement.

When implementing the MLA framework, it is crucial to prioritize the principle of mutual respect for state sovereignty. This means that every request for aid should strictly comply with the laws and procedures of the country where the assistance is being sought. There are two main types of regulated cooperation in the implementation of mutual assistance: direct cooperation (agency to agency), which involves law enforcement

agencies working together without formal bureaucratic channels, and indirect cooperation (government to government), which occurs through formal requests made through intergovernmental bureaucratic channels, following specific procedures, terms, and conditions. Although Law Number 1 of 2006 regulates the MLA mechanism, several challenges frequently arise, including intricate bureaucracy, disparities in legal systems, and limited resources. To enhance the efficacy of mutual assistance in criminal scenarios, we can implement a variety of measures: Streamline administrative procedures, enhance international collaboration, enhance resource capacities, and enhance law enforcement professionals' comprehension of the MLA system and the significance of international cooperation in law enforcement. These actions are expected to improve the effectiveness and efficiency of cooperation attempts in criminal cases, strengthen law enforcement, and successfully prevent international criminal activities.

### *B. Definition of Transnational Crime and its Types*

According to Mueller, as cited by Neil Boister, the phrase 'transnational crime' is used in the field of criminology rather than in the field of law.[10] The term was introduced by the UN Crime Prevention and Illegal Justice Branch to describe certain illegal activities that cross national boundaries, violate the laws of many states, or affect another country.

According to Article 3, paragraph (2) of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25 of November 15, 2000), which is also referred to as the Palermo Convention, transnational crime is legally defined as follows:

- (a) *According to paragraph 1 of this article, an offense is considered transnational if;*
- (b) *It occurs in multiple states;*
- (c) *The act takes place in one state, but an important component of its prior to strategy, guidance, or management occurs in a different manner;*
- (d) *The crime occurs in a single state, yet it involves an organized criminal group active in multiple states;*
- (e) *The offense occurs in one state, yet it significantly impacts another.*

Transnational crime, as described by Mueller and Neil Boister, is primarily a criminological term rather than a judicial one, as Mueller noted and Boister paraphrased. The phrase "transnational organized crime" was coined by the UN Crime Prevention and Criminal Justice Branch to describe criminal activities that cross international borders, violate the laws of some countries, or have an impact on other nations.[11] Transnational crime is legally defined under Article 3, paragraph (2) of the United Nations Convention against Transnational Organized Crime, commonly referred to as the Palermo Convention. The agreement categorizes a criminal act as transnational if it takes place in numerous countries, includes an organized criminal gang operating in multiple countries, or has a major influence on other countries. Transnational crime poses a challenge to conventional law enforcement systems that are based on national boundaries, necessitating international collaboration through extradition and MLA. The process of globalization has broadened the scope and intricacy of transnational criminal activities, necessitating a unified and effective multinational strategy. The execution of the Palermo Convention, which provides a legal framework to address international crime, often needs improvement due to differences in legal systems, complex bureaucracy, and limited resources. Hence, it is imperative to establish international collaboration and coordination among nations in order to guarantee efficient enforcement of laws against transnational crimes.

### *C. Confiscation of Assets*

The word asset forfeiture can be seen as interchangeable with confiscation and forfeiture. The precise meaning of confiscation according to the United Nations Convention against Corruption (UNCAC) can be found in Article 2, namely in letter g. The term "confiscation," which may also include forfeiture when applicable, denotes the permanent deprivation of property as decreed by a court or other authorized entity. The United Nations Office on Drugs and Crime (UNODC) has officially approved and supported this word. The translation of Article 2 letter g is as follows: "Confiscation" denotes the permanent deprivation of assets, which may encompass the imposition of fines if relevant, in accordance with a ruling by a court or another duly authorized body.[12] Asset confiscation, or asset forfeiture, is a legal process where the government seizes property from its owner without offering adequate compensation. This is carried out as a kind of retribution for transgressions made by either the property or its proprietor.[13]

The seizure of assets is carried out in accordance with the Criminal Procedure Code, highlighting its importance.[14] This requirement is essential for the confiscation of assets, whether in Indonesia or in a foreign country, while acting as the Requesting Country or Country Requested. The author will discuss the relevance of the research title to the thinking framework and examine the implementation carried out by the Indonesian Prosecutor's Office in their efforts to confiscate assets obtained from unlawful operations abroad.

The utilization of mutual legal assistance is an essential measure in the procedure of seizing assets derived from transnational criminal activities.[15] It is the ultimate recourse when direct international cooperation has

been unsuccessful. The Law of the Republic of Indonesia Number 1 of 2006 regarding Mutual Assistance in Criminal Matters establishes a broad framework for business processes between foreign countries and Indonesia. However, it does not provide specific procedures for each competent institution to follow when handling or submitting requests.

Asset confiscation is carried out in accordance with the Criminal Procedure Code, which highlights their importance. Prior to the seizure of assets, it is imperative to satisfy this requirement, regardless of whether the assets are situated in Indonesia or elsewhere. This applies to both the requesting country and the country being asked to comply. The author will provide a detailed explanation of the importance of the study title in connection to the cognitive framework. In addition, they will examine the measures taken by the Indonesian Prosecutor's Office to confiscate assets obtained from illicit acts located abroad.

### III. METHOD

Research is the systematic and deliberate process of seeking and gathering information. Research is the process of searching again, derived from the combination of the Latin words "re" meaning "again" and "to" meaning "search". Linguistically, it signifies the act of examining something once more. Research involves the systematic investigation of information in order to discover novel insights and reliable facts that can be applied to address a specific inquiry or elucidate a particular issue. The author employs normative legal research as the research methodology. Normative legal study is a branch of law that analyzes written laws from several perspectives, including theoretical terms, philosophical and historical comparison, construction, scope, fundamental terms, consistency, general explanation, description of each provision, formality, and legal enforceability. The two methodologies employed are the legislation approach and the case approach. The prescribed method being referred to involves scrutinizing statutes, rules, agreements, and conventions pertaining to the execution of asset confiscation via a mechanism of mutual legal assistance. A case approach refers to the study of the norms of a rule as implemented in legal practice. The case strategy involves the utilization of a mutual legal assistance framework by the Indonesian Prosecutor's Office to address issues pertaining to asset seizure. The author also employs a comparative technique. This method involves comparing legal provisions within the framework of norms, rules, principles, and legal systems in order to acquire a precise understanding of the distinctions and similarities between the two things being compared.

### IV. RESULT AND DISCUSSION

#### A. *The authority of the Indonesian Prosecutor's Office to Confiscate Assets and Submit MLA Requests*

The legal provisions outlined in Law Number 8 of 1981 on Criminal Procedure Law, Article 30 paragraph (1) letter b of Law Number 16 of 2004 on the Indonesian Prosecutor's Office, and Article 30A of Law Number 11 of 2021 on Amendments to Law Number 16 of 2004 on the Indonesian Prosecutor's Office carry great importance.[9] The Indonesian Prosecutor's Office benefits from a robust legislative framework, particularly in terms of asset recovery. The Prosecutor's Office in Indonesia serves a vital role in the criminal law system by ensuring the implementation of the judge's findings and court rulings that have enduring legal validity. In addition, they possess the authority to conduct investigations, seizures, and the restitution of assets associated with criminal activities.

The primary objective of this arrangement is to guarantee the Prosecutor's Office's ability to perform its duties efficiently and in accordance with established legal protocols. Given this jurisdiction, it is anticipated that the Prosecutor's Office will have the ability to take necessary measures to regain public assets that were lost due to criminal activities and serve as a deterrent to criminals. The primary intent of this regulation is to provide financial compensation for the state's losses caused by corrupt actions, thereby strengthening broader efforts to eradicate corruption.[16]

The prosecutor's office must use the authority mandated by this law as optimally as possible.[17] Their role is vital because the success of effective law enforcement and the eradication of criminal acts of corruption can fulfill two main objectives.[18] The first objective is to ensure that perpetrators of corruption are punished with criminal penalties that are fair and commensurate with their actions. The second objective is to return state losses arising from criminal acts of corruption.

Law Number 1 of 2006, specifically Article 9, paragraphs (1) and (2), establishes the legal basis for the Minister to directly request Reciprocal Assistance in Criminal Matters from foreign countries for assets located outside the country. Either by direct means or by utilizing diplomatic channels. This request was made in response to a request from the National Police Chief or Attorney General. This request demonstrates that the established legal mechanisms offer a strong foundation for the Prosecutor's Office to initiate actions in the retrieval of assets derived from illegal activities, including assets situated in other countries, in accordance with principles of fairness and efficient law enforcement.

A more thorough examination reveals that the rules outlined in these many statutes establish a comprehensive framework for the Indonesian Prosecutor's Office to fulfill its responsibilities. Law Number 8 of 1981, Law Number 16 of 2004, and Law Number 11 of 2021 affirm and broaden the jurisdiction of the Prosecutor's Office in the enforcement of laws and the retrieval of assets. The precise provisions concerning Mutual Assistance in Criminal Matters further underscore the crucial need of international collaboration in the retrieval of assets situated overseas.

By implementing this regulation, it has the potential to enhance the efficiency of law enforcement and eliminate corruption in Indonesia.[19] By using more efficient asset recovery methods, the Prosecutor's Office can aid in the retrieval of state losses and mitigate the adverse effects of corrupt criminal activities. This arrangement also serves as a deterrent by clearly indicating that criminal acts of corruption will be handled sternly and the profits from these crimes will be seized and given back to the state or the legitimate recipients.

Ultimately, the power bestowed upon the Indonesian Prosecutor's Office by multiple legislations pertaining to asset retrieval plays a pivotal role in the effective implementation of law enforcement measures in Indonesia. Efficient implementation of this authority is crucial to eliminate corruption, reclaim public assets, and uphold justice and integrity in the Indonesian criminal judicial system.

### *B. Legal Aspects in Asset Confiscation Requests*

Asset confiscation, within the framework of Mutual Legal Assistance (MLA), serves as a means for law enforcement authorities in Indonesia to seek legal aid from foreign countries in order to enforce the law against those involved in illegal activities. The assets in question include proceeds derived from illicit activities, as stipulated in Law Number 31 of 1999 pertaining to the Elimination of Corruption Crimes, notably in Article 2 in conjunction with Article 38 paragraphs (1) and (2) of Law Number 20 of 2001, which modify Law Number 31 of 1999. Criminals frequently conceal or transfer the profits from their illegal activities to foreign countries. A mechanism following the guidelines of the MLA is required to restore state losses and enforce court rulings as directed by the Prosecutor.

Mutual Legal Assistance in Indonesia is governed by the Republic of Indonesia Law Number 1 of 2006, which deals with Mutual Assistance in Criminal Matters. This legislation governs the fundamental concepts, criteria for making requests, and the extent or categories of aid sought under the MLA. Indonesian law enforcement officials, operating on behalf of the Indonesian Government, must adhere to the stipulations outlined in Law Number 1 of 2006 when filing requests for asset confiscation to other governments. The law specifically states that asset confiscation is a specific sort of request for aid in MLA, as outlined in Article 3, paragraph (2) letter g.

In order to submit MLA requests to nations that have MLA agreements, law enforcement officials must consult the legislation that ratifies the agreement. This rule is crucial to guarantee the proper and efficient adherence to the procedures and obligations outlined in the MLA agreement.

When submitting an MLA request, the Indonesian Ministry of Law and Human Rights (Kemenkumham), which is the central authority, handles the bureaucratic process of submission. The bureaucratic procedure at the central authority is governed by Regulation 12/2022 of the Minister of Law and Human Rights of the Republic of Indonesia. This regulation specifically concerns the management of mutual aid in criminal affairs under the Kemenkumham. This statute delineates the sequential procedures for handling requests from law enforcement in Indonesia and sets the precise time frame for each stage of the process.

This analysis demonstrates that the Indonesian Prosecutor's Office possesses a robust legal foundation and a meticulous procedure for executing asset seizure via MLA. The Law Number 1 of 2006 establishes a complete legal structure that enables law enforcement agencies to formally request help from one another in criminal proceedings. Furthermore, Minister of Law and Human Rights Regulation Number 12 of 2022 offers comprehensive instructions concerning the protocols and timeframe for managing MLA requests, guaranteeing the timely and successful execution of legal assistance appeals. By using this approach, it is anticipated that the attempts to retrieve assets obtained via illegal activities can be more efficient, compensate for the financial losses incurred by the state, and serve as a deterrence to individuals involved in criminal activity.

### *C. Practices and Flow of Submitting MLA Claims in the Form of Confiscation of Assets Abroad*

The Prosecutor's Office of the Republic of Indonesia (RI) is a legal enforcement agency with jurisdiction granted by statutory rules. MLA mechanism can be employed to solicit the seizure of assets acquired through illicit acts. This request is being filed through the Kemenkumham as per a court verdict and decision to move assets to another nation where they are currently located.

Following accepting the inquiry from the Indonesian Prosecutor's Office, the Indonesian Kemenkumham will conduct an investigation in accordance with Regulation Number 12 of 2022, which deals with the management of mutual aid in criminal issues. The duration of this process is around 39 days. Afterwards, the MLA request is officially submitted to the country that has been particularly requested (Requested Country).

The Kemenkumham will cooperate with the Requested State and provide the Indonesian Prosecutor's Office with any required information or input, in accordance with the needs of the Requested State. If deemed necessary, the Central Authorities of the Requesting State, the Requested State, and the Indonesian Prosecutor's Office can schedule meetings or casework meetings to obtain the necessary clarification and answers required by the Requested State in order to comply with the request made under the MLA agreement.

The Requested nation shall process MLA requests in compliance with the applicable laws and regulations of the nation. This is done to ensure that the confiscated assets comply with the principle of admissibility. Admissibility, as per the definition provided by Black's Law Dictionary, pertains to the merit of being worthy of consideration in the decision-making process and can be used as a benchmark in legal procedures. Hence, the use of resources in accordance with the legislation of the country being requested is both legal and appropriate, allowing for their return to the country making the request.

The degree of adherence to the requirements mandated by the Requested State, as per the prevailing rules in that jurisdiction, may vary from the degree of adherence to the conditions stipulated by the Indonesian Prosecutor's Office for asset seizure in Indonesia. Hence, it is imperative for the Indonesian Prosecutor's Office to verify that all the prerequisites specified by the Requested State have been met in order to effectively manage the MLA's request and accelerate the repatriation of the seized assets.

## V. CONCLUSION

The Mutual Legal Assistance (MLA) mechanism, frequently employed by law enforcement, facilitates the seizure of assets in other jurisdictions. Nevertheless, the extensive bureaucracy and procedural requirements present an opportunity for criminals to promptly shift the proceeds of their illegal activities to third parties. The effectiveness of asset seizure through the MLA mechanism must always be a significant advancement in its regulation within statutory laws. Immediate simplification of the flow and bureaucracy is necessary to expedite the follow-up on MLA requests by the Requested Country. The effectiveness of asset confiscation through the MLA mechanism relies on regular meetings and communication with other countries, both within international and bilateral organizations. This facilitates the gathering of information regarding the submission of MLA requests, including the necessary requirements and procedural steps for follow-up requests. Consequently, this minimizes the need for other countries to make repeated requests for additional information once the requested country has received the MLA request.

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