

The Implementation of Mutual Legal Assistance between Indonesia and Switzerland Regarding Asset Recovery

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Abstract

Mutual Legal Assistance in Criminal Matters (MLA) between Indonesia and Switzerland was ratified by the Indonesian government through the enactment of the Law Number 5 of 2020. It outlines the applicable legal framework for reciprocal legal assistance in criminal matters, including the trace of the proceeds of crimes. It is expected that this MLA may facilitate the process of returning assets from Switzerland to Indonesia. This article aims to discuss the implementation of the MLA between Indonesia and Switzerland in returning assets resulted from corruption which were especially stored in Swiss banks. This normative legal research employs both statutory and comparative approach. Analysis was made based on the study upon relevant legal materials, including national legislation, international regulations, and journal articles. It is found that the contribution of the MLA in regard to returning asset resulted from corruption is still minimum. The implementation of the MLA between Indonesia and Switzerland encountered obstacles and various resistance. More serious efforts are needed in order to achieve the main goal of the establishment of the MLA, namely asset recovery.

Keywords: Asset recovery, Corruption, Indonesia, Mutual legal assistance, Switzerland

1. Introduction

Corruption is no longer a national issue but an international issue. Corruption has spread across national borders in various types and forms, including the illegal confiscation of government assets. Because of this, the state loses its ability to build welfare for its people, which of course results in the loss of people's basic rights to development due to continuous corruption.¹ So, it is necessary to uphold real corruption eradication efforts from the government.

Eradication efforts must focus on three major issues: prevention, eradication, and asset recovery. These three reasons emphasize the need for the recovery of state financial losses in addition to preventive and punitive measures.² Various forms of corruption are mostly carried out by perpetrators, especially money laundering, where perpetrators hide corrupt profits in foreign bank accounts so that it will be more difficult for the state or law enforcement to find

¹ Ridwan Arifin, Indah Sri Utari, and Herry Subondo, 'Upaya Pengembalian Aset Korupsi Yang Berada Di Luar Negeri (Asset Recovery) Dalam Penegakan Hukum Pemberantasan Korupsi Di Indonesia', *IJCLS (Indonesian Journal of Criminal Law Studies)*, 1.1 (2017), 105-37 <https://doi.org/10.15294/ijcls.v1i1.10810>.

² Ade Mahmud, 'Urgensi Penegakan Hukum Progresif Untuk Mengembalikan Kerugian Negara Dalam Tindak Pidana Korupsi', *Masalah-Masalah Hukum*, 49.3 (2020), 256-71 <https://doi.org/10.14710/mmh.49.3.2020.256-271>.

and retrieve these assets.³ When public assets are lost due to corruption, it is difficult to get them back because the perpetrators have special access and are difficult to find if they are hiding or laundering money.⁴

In Law Number 7 of 2006 concerning ratification of the UNCAC (United Nations Convention Against Corruption), Indonesia has ratified the UNCAC agreement as a form of cross-border anti-corruption enforcement, where so far, the Indonesian government had difficulty returning the assets of corruptors abroad. By ratifying the convention, Indonesia can use the convention as a new instrument for asset recovery.⁵ The UNCAC agreement contains substantial information indicating a shift in perspective on several aspects of corruption, including legal issues, human rights, sustainable development, poverty, security, reverse evidentiary systems, and mutual legal assistance.⁶ Countries that are members of the agreement and have ratified it, like Switzerland, can make agreements to help each other with legal matters.

On February 4, 2019, Indonesia and Switzerland signed an MLAT agreement, which was approved by the DPR in Law Number 5 of 2020 concerning ratification of mutual agreements in criminal matters between Indonesia and the Swiss Confederation, including mutual legal assistance in the 10th criminal case signed by Indonesia and other countries. This form of international agreement involves crucial and fundamental issues for the two countries in terms of legal norms that apply specifically to the parties. This agreement is a continuation of the extradition agreement and is a promise for both parties to work together and share information on how to stop and eradicate transnational crimes. Not only that, but this agreement is also a big opportunity for Indonesia to recover assets due to corruption hidden in Switzerland.⁷

Some view the MLAT Agreement between Indonesia and Switzerland as a diplomatic success, as Switzerland is the largest financial centre in Europe and is known for its strict banking security and privacy laws. Banks in Switzerland have a reputation for excellent security and high effectiveness and are among the safest private funds in the world. As proof that there are several corruptors with big names, there are assets belonging to the former managing director of Global Bank, Irawan Salim, that amount to Rp. 500 billion. The assets of ECW Neloe, the former Main Director of Bank Mandiri, amount to USD 5 million, as did the assets of Century Bank's bailout, which was distributed in 2008. But there are still people who think that MLAT between Switzerland and Indonesia is impossible, and since this agreement is new, it has not yet been shown to have a positive effect on both success and the return of assets to Indonesia.

Therefore, this study will examine the implementation of MLAT between Indonesia and Switzerland as a reciprocal agreement regarding the return of state assets due to corruption.

³ Michael Levi, Peter Reuter, and Terence Halliday, 'Can the AML System Be Evaluated Without Better Data?', *Crime, Law and Social Change*, 69 (2018), 307-28 <https://doi.org/10.1007/s10611-017-9757-4>.

⁴ Mahmud.

⁵ Yustitiantingtyas Levina and others, 'Extradition as an Effort to Restore Corruption Perpetrators Who Escape Abroad', *Test Engineering & Management*, 4.1 (2020), 11908-18.

⁶ Bisdan Sigalingging, 'Bantuan Hukum Timbal Balik Dalam Perampasan Aset Korupsi Antar Lintas Batas Negara', *Iuris Studia: Jurnal Kajian Hukum*, 2.3 (2021), 387-98 <https://doi.org/10.55357/is.v2i3.152>.

⁷ Teguh Yuwono, Retno Kusniati, and Budi Ardianto, 'Bantuan Hukum Timbal Balik Dalam Penanganan Kejahatan Transnasional: Studi Kasus Indonesia-Swiss', *Uti Possidetis: Journal of International Law*, 2.3 (2021), 268-87 <https://doi.org/10.22437/up.v2i3.13042>.

So, a question arises that will be answered in this article: How is the implementation of MLAT between Indonesia and Switzerland in terms of returning national assets?

2. Method

This research uses normative legal research, commonly known as doctrinal legal research. A legal and case approach is used in this normative legal research. Data collection in this study are carried out through library-based research such as books, articles, and journals that are appropriate to the research. The data collected will be verified as correct and lawful according to current international and national laws. As a result, facts are checked methodically using qualitative legal techniques, which are carried out systematically by assessing and collecting relevant data.

3. Discussion and Analysis

3.1. Corruption as Transnational Crime

Corruption is one of the priorities in the United Nations Convention Against Corruption (UNTOC). The inclusion of criminal acts of corruption in Article 8 UNTOC is based on the fact that corruption does not only have a national impact but is a transnational problem on a large scale and relates especially to money laundering. Corruption is a crime that is needed to commit or help commit other crimes, like money laundering, or crimes that violate human rights, like genocide.⁸ Transnationality can concern either the modalities and means of perpetration of corrupt schemes or their effects. As for the ways and means of perpetration, Corruption is transnational when:⁹

- 1) Corrupt schemes are committed, prepared, planned, directed, or controlled in more than one states.
- 2) Corrupt schemes are committed in one state but involve groups or individual who engage in corrupt activities in more than one states.
- 3) The interests harmed or endangered by corrupt schemes are shared by more than one state, if not by the entire international community.
- 4) It is committed in one state but has substantial effects in another state.

In Article 2 Letter A, the UNTOC explains that corruption is categorized as a transnational crime, namely the existence of a structured group at a certain time period consisting of three or more members of the group. committed a crime under the convention. has a goal of obtaining financial benefits either directly or indirectly.¹⁰ In addition, corruption also has an impact on hampering the sustainable development of a country and law enforcement carried out by law enforcement officials. This crime was committed in a very sophisticated way.¹¹ National boundaries are no longer a problem because corruption can

⁸ Jayadi Al Amien and Wisnu Widayat, 'The Role of Immigration Toward The Criminal Acts of Corruption as Organized Transnational Crime Based on Untoc's', *Journal of Law and Border Protection*, 3.1 (2021), 103–14 <https://doi.org/10.52617/jlbp.v3i1.212>.

⁹ 'United Nations Convention Against Transnational Organized Crime', 2000.

¹⁰ 'United Nations Convention Against Transnational Organized Crime'.

¹¹ Sugeng Wahyudi, 'Penal Policy on Assets Recovery on Corruption Cases in Indonesia', *Journal of Indonesian Legal Studies*, 4.1 (2019), 45 <https://doi.org/10.15294/jils.v4i01.28224>.

cross national territorial boundaries and become the root cause of a country's problems in its economic, social, political, and cultural aspects.¹²

3.2. Legal Framework Mutual Legal Assistance in Criminal Matters

1) MLAT in International Framework

The International Legal Framework UNTOC provides an illustration that MLAT can aim to take evidence or information from someone; judicial documents; executions during searches, seizures, and suspensions; research on objects, provide information, evidence, and expert opinions; Provide certified or original copies of related documents and records, including government, bank, corporate, or business records; identify or trace the proceeds of crime, assets, or objects intended as evidence; facilitate the volunteering of people in the requesting country; and provide other types of assistance as long as they do not violate the national law of the requesting country.¹³ In other ways, MLAT is strongly encouraged in UNCAC, where signatory countries are encouraged to carry out international cooperation, including in the form of MLAT, to eradicate corruption. so that there are many forms that can be taken by various countries in order to eradicate corruption in accordance with existing regulations.

In making cooperation agreements, MLAT can be carried out bilaterally or multilaterally. where bilateral MLAT can be based on a good reciprocity agreement between the two countries. Meanwhile, multilateral MLAT can be carried out with various countries that are members of a regional group, such as the Southeast Asia Region, which has been signed by almost all ASEAN member countries, including Indonesia.¹⁴

Several things can be seen, namely the importance of international instruments as a legal basis for requests for MLAT. Given the international cooperation framework created by a number of instruments, both specifically MLAT and criminal, it is important for judicial authorities to have a real understanding of what international instruments are going to do, and what obligations can be imposed on a country.¹⁵

International cooperation, both bilateral and multilateral, is expected to help prevent criminal acts and assist in the investigation and prosecution of perpetrators of crimes that are detrimental to each country. transnational or cross-country criminal acts that result in the emergence of legal issues between one country and another that require handling through good relations based on the laws of each country. The handling of transnational crimes must be carried out evenly between countries in the form of MLAT with a legal basis that is able to provide legal certainty, justice, and benefits for society. especially in the eradication of criminal acts of corruption which are included in transnational crimes.

¹² Fitri Yani and Azan Nurohim, 'Peranan Perjanjian Ekstradisi Dalam Menanggulangi Kejahatan Korupsi Di Indonesia', *Jurnal Lex Justitia*, 1.2 (2020), 140-58 <http://dx.doi.org/10.22303/lex%20justitia.1.2>.

¹³ 'United Nations Convention Against Transnational Organized Crime'.

¹⁴ Tamar TK Andries, 'Kajian Hukum Terhadap Perjanjian Mutual Legal Assistance Ri-Konfederasi Swiss Dalam Pemberantasan Korupsi Di Tinjau Dari UU No. 1 Tahun 2006 Tentang Perjanjian Timbal Balik Dalam Masalah Pidana', *Lex Crimen*, 10.6 (2021).

¹⁵ Cecily Rose, 'The Creation of a Review Mechanism for the UN Convention Against Transnational Organized Crime and Its Protocols', *American Journal of International Law*, 114.1 (2020), 51-67 <https://doi.org/10.1017/ajil.2019.71>.

2) MLAT in ASEAN Framework

In the Southeast Asia Region, transnational crime consists of drug trafficking, human trafficking, money laundering, transnational prostitution, piracy, arms smuggling, international economic crimes, weapons smuggling, cybercrime, and corruption, all of which are worsening and spreading. Drug trafficking is one of the triggering factors for taking this matter seriously.¹⁶ Bearing in mind that the three ASEAN member countries, namely Myanmar, Laos, and Thailand, are the main producers of narcotics and transit points for drugs sent to North America, Europe, and other Asian regions. At the same time, some of the largest and most dangerous criminal organizations operate in the ASEAN region, such as the Chinese Triad, Japanese Yakuza, and Vietnamese gangs.¹⁷ So, need an agreement between the ASEAN regions to prevent the spread of transnational crime through MLAT.

The agreement between the ASEAN regions is needed to prevent the spread of transnational crimes through MLAT. This undoubtedly refers to the issue of corruption, which is a key factor in the formation of MLAT in ASEAN. One step was the creation of the AMLAT (ASEAN MLAT), which consists of a formal process by which a country requests another state to exercise its powers or take steps to obtain evidence that must be admissible in court. The formation of AMLAT has also provided a legal framework that reflects the common will and aspirations to increase effectiveness in fighting transnational crime.¹⁸ AMLAT also establishes certain limits on the prevention, investigation, and trial of transnational crimes.

Apart from being parties to international conventions, ASEAN member countries have signed various bilateral MLAT agreements with regional and extra-regional countries. Becoming a signatory to the AMLAT convention is only the first step in demonstrating the country's commitment to providing MLAT to combat transnational crime.¹⁹ AMLAT requires assistance as a matter of international law. Traditionally, international cooperation is carried out between member countries through a process of rogatory letters. This means that when assistance is requested through these traditional means, the requested country is not obligated to accept the request or act on it.²⁰ AMLAT also gives member countries a way to ask for and give each other help in gathering evidence and information for criminal investigations and court cases. It also makes it easier for ASEAN member countries to meet their obligations based on different MLATs set by different United Nations conventions.²¹

The types of assistance that can be provided in article 1 of AMLAT are as follows: a) Taking evidence or obtaining voluntary statements from people, b) Deciding for people to provide evidence or assist in criminal investigations, c) Effective court document service, d) Carry out searches and seizures, e) Examination of objects and places, f) Provide original or official copies of relevant documents, records, etc., g) Identify or trace assets originating from

¹⁶ Rinaldy Amrullah and Rudi Natamiharja, 'Asset Recovery in the Criminal Act of Corruption in ASEAN', *Simbur Cahaya*, 27.1 (2020), 43–60 <http://dx.doi.org/10.28946/sc.v27i1.805>.

¹⁷ Ma Aguinaldo, 'East Meets West: Development of Mutual Legal Assistance in Criminal Matters between and Within the Association of Southeast Nations and the European Union', 2021.

¹⁸ Efendi Lod Simanjuntak, Yuris T Naili, and FX Adji Samekto, 'Free Movement of Judgments in Cross-Border Money Laundering Crimes: A Legal Stance Toward the ASEAN Legal Integration', in *ASEAN International Law* (Springer, 2021), pp. 217–28.

¹⁹ Chat Le Nguyen, 'Towards the Effective ASEAN Mutual Legal Assistance in Combating Money Laundering', *Journal of Money Laundering Control*, 15.4 (2012), 383–95 <https://doi.org/10.1108/13685201211265971>.

²⁰ Le Nguyen.

²¹ Simanjuntak, Naili, and Adji Samekto.

criminal acts and tools of criminal acts, h) Restrictions on asset transactions or freezing of assets originating from crimes that can be recovered and confiscated, i) Recovery, or confiscation of property originating from a crime, j) Find and identify witnesses and suspects.

However, it must be understood that Article 2 of AMLAT does not apply the following matters:²² 1) Arrest or detention of a person to extradite that person, 2) Implementation in a member country is requested for a criminal verdict imposed in the requesting member country, except insofar as it is approved by the domestic law of the requesting member country, 3) Transfer of persons in detention to serve punishment, 4) Diversion of criminal proceedings.

In addition, there is nothing in the AMLAT that gives a state party the right to take action in the jurisdiction of another member country. In the application of AMLAT, evidence can be found in the conduct of searches and seizures. The requested member state must comply with requests for search, seizure, and transfer of documents, records, or goods. Similar evidence can be found in providing assistance in the process of confiscation. When the requesting member country must provide all the information that the requested country deems necessary for carrying out the confiscation order, Furthermore, the requesting member country is obliged to provide the requested member country, in addition to a request for mutual legal assistance, an original signed supporting order or a notarized copy, as appropriate.²³

AMLAT reinforces the importance of reciprocity in its own terms. First, subject to the domestic laws of each member state, the requesting state party must repay any assistance provided in respect of an equivalent offense, regardless of the applicable penalty. In addition, AMLAT provides reciprocity as a discretionary basis for refusal, whereby the requested state may refuse the request if the requesting member state fails to do so, so that it will be able to comply with future requests of a similar nature requested by the member state for assistance in criminal matters.²⁴

3) MLAT in National Framework

Indonesia already has a law that is a form of MLAT, namely Law No. 1 of 2006 Concerning Mutual Legal Assistance in Criminal Matters (MLAT Law), to regulate the scope of MLAT. In Article 3, Paragraph 1, of MLAT Law, the meaning is provided, namely: "MLAT in criminal matters, hereinafter referred to as assistance in the framework of investigation, prosecution, and examination in court hearings in accordance with the provisions of the laws and regulations of the requested state".²⁵ Where Just like AMLAT, the MLAT Law does not provide the authority to carry out extradition or surrender of persons, arrest, or detention for the purpose of extradition or surrender of persons, transfer of detainees, or transfer of cases.²⁶ The MLAT Law regulates in detail requests for MLAT from the government of the Republic

²² 'Treaty on Mutual Legal Assistance in Criminal Matter', 2004.

²³ Simanjuntak, Naili, and Adji Samekto.

²⁴ Helix Wirawan Ismet, 'Application of Reciprocal Law in Returning Assets Resulting from Corruption', *Journal of Contemporary Issues in Business and Government*, 27.5 (2021), 492-516 <https://doi.org/10.47750/cibg.2021.27.05.031>.

²⁵ *Law of The Republic of Indonesia Number 1 Year 2006 Concerning Mutual Legal Assistance In Criminal Matters*, 2006.

²⁶ Arga A Sarayar, 'Kajian Hukum Bantuan Kerjasama Timbal Balik (Mutual Legal Assistance) Dalam Penyelesaian Tindak Pidana Internasional', *Lex Et Societatis*, 7.11 (2019) <https://doi.org/10.35796/les.v7i11.27371>.

of Indonesia to the requesting country or vice versa.²⁷ From the definition given in the law, the basis of MLAT is namely:²⁸ a) Assistance received or proposed is assistance related to criminal acts committed within the criminal scope, b) Assistance related to criminal procedural law procedures in Indonesia (investigations, prosecutions, and examinations at court hearings), c) Assistance is formally submitted and received through a request relationship mechanism between countries. d) The assistance submitted must comply with the legal provisions of the country for which assistance is requested.

The Mutual Legal Assistance Law stipulates that the ministry of law or the ministry of law and human rights is responsible for accepting and transmitting petitions for mutual legal assistance. Sending requests for assistance and requests to collect evidence will reduce the effectiveness of international criminal law enforcement. MLAT collaboration may generally be implemented via three channels: diplomatic, through a central authority, and through direct cooperation between law enforcement agencies.²⁹ As the primary authority for MLAT implementation, the Minister of Law and Human Rights may request authorized officers to take out police action. This involves searching, blocking, seizing, reviewing correspondence, and obtaining information.³⁰ However, the Minister of Law and Human Rights has the authority to reject requests for MLAT cooperation from other countries if the proposed action could jeopardize national interests or is related to political cases or prosecutions based on a person's race, religion, nationality, or political beliefs.

3.3. Factors Behind the Formation of MLAT between Indonesia-Switzerland

The transfer of assets resulting from corruption is currently one of the modes that are developing in corruption cases. In this case, the perpetrator took advantage of the role of a third party to become a recipient of money resulting from corruption to further secure and disguise its origin so that it looks like legitimate money.³¹ The point of transferring assets is to cover up corruption as if the people who did it did not do things that are detrimental to the country's finances or get money so they can trick law enforcement. Various ways can be done by actors, one of the ways that is often used by perpetrators is to disguise the origin of money by involving third parties. It is usually carried out in various forms of economic activity, such as borrowing the name of a person as an asset owner, investing, trading stocks, making deposits, buying bonds, and other securities. The problem of returning assets becomes even more complicated if the perpetrators use the proceeds of corruption to invest in a company abroad, resulting in a mix-up of assets between company assets and assets resulting from corruption. When conditions are becomes increasingly difficult for law enforcement to confiscate assets because they have to sort them out fairly.

Another problem faced in law enforcement is seizing stolen state assets; most of the perpetrators place these assets outside the territory of Indonesia, which is considered safe and untouched by law enforcement. The placement of these assets aims to secure funds while at

²⁷ Alliya Yusticia Pramudya Wardani, 'Menelaah Potensi Mutual Legal Assistance Dalam Penegakan Hukum Di Indonesia', *Verstek*, 9.3 (2021) <https://doi.org/10.20961/jv.v9i3.55042>.

²⁸ Sarayar.

²⁹ Marfuatul Latifah, '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 (2017), 53-69 <https://doi.org/10.22212/jnh.v7i1.922>.

³⁰ Clara Ignatia Tobing, 'Ektradisi Dan Mutual Legal Assistance Sebagai Sarana Penegakan Hukum Pidana Internasional', *Jurnal Hukum Pelita*, 3.1 (2022), 1-15 <https://doi.org/10.37366/jh.v3i1.998>.

³¹ Mahmud.

the same time committing money laundering because, generally, the perpetrators have extraordinary networks that make it difficult for law enforcement.³² The perpetrators take advantage of financial centers in developed countries, which are considered very safe, to protect these assets. It has been proven in a number of cases of corruption involving large state losses that these funds were not kept in Indonesia but in developed countries that implemented quite strict safeguards for customer funds; furthermore, the Indonesian government did not have an MLAT with the country where the perpetrators kept assets resulting from corruption.

Switzerland Apart from having highly guarded privacy and security, many criminals choose to save money in Switzerland because of the political and economic stability that supports it. The country remained neutral throughout the major European conflicts. This neutrality makes Switzerland an ideal place to secure assets from confiscation and loss. Not only that, but tax costs are low, and account holders do not have to pay income tax if their money does not come from companies or shares in Switzerland. In the various cases that have been uncovered by law enforcers, the Attorney General's Office, and the Corruption Eradication Commission, there are a number of countries that have allegedly been hiding places for stolen property, namely Singapore, Australia, and Switzerland. This country often becomes a repository for stolen assets and seems to protect the assets of corruptors who are stored in it. The following is data on Indonesian assets stored in Switzerland: the first is the case Irawan Salim, the second is the case ECW Noloe.³³ And for the rest, researchers have not been able to find other evidence regarding the hiding of assets resulting from corruption in Switzerland due to strict privacy regulations from the state and banks in Switzerland. Because Switzerland has the potential to commit transnational crimes, cooperation between Indonesia and Switzerland is needed to take action against the perpetrators of crimes and their evidence. With cooperation between countries written into the law, Indonesia will be in a better position to ask Switzerland to help with things like sharing information and proving ongoing crimes.

3.4. Instrument and Supporting Institutions Implementing Asset Recovery

1) Supporting Regulations for Asset Recovery according to UNTOC

Article 12 of the UNTOC authorizes the UN State to implement measures in its legal system to permit the seizure of profits and instruments of crime covered by the Convention or their equal value. Sentences are designed to reflect differences in how various legal systems implement the duties imposed by this Article 12 within their domestic legal systems.³⁴ In order to comply with the provisions of Article 12, the state, on the other hand, must have extensive capabilities. Article 12 also mandates that all UN member states develop mechanisms that permit the identification, tracking, freezing, and seizure of confessable items. In addition, it requires each UN member state to enable courts or other competent authorities to compel the

³² Razananda Skandiva and Beniharmoni Harefa, 'Urgensi Penerapan Foreign Bribery Dalam Konvensi Antikorupsi Di Indonesia', *Integritas: Jurnal Antikorupsi*, 7.2 (2021), 245–62 <https://doi.org/10.32697/integritas.v7i2.826>.

³³ Deddy Candra and Arfin, 'Kendala Pengembalian Aset Hasil Tindak Pidana Korupsi Transnasional', *Jurnal Bppk*, 11.1 (2018), 28–55 <https://doi.org/10.48108/jurnalbppk.v11i1.49>.

³⁴ Rafsanjani Is Marus and Wahyu Eka Putra, 'Implementation of Cross-Ministry and Institutional Cooperation on The Eradication of Corruption in Indonesia in The Framework Of Uncatoc & Uncac and Its Relationship With The Immigration Law', *Journal of Law and Border Protection*, 2.2 (2020), 93–107 <https://doi.org/10.52617/jlbp.v2i2.200>.

provision of bank records and other evidence to facilitate the identification, freezing, and seizure of illicit funds.

Article 13 then specifies the confiscation processes for international cooperation. This is crucial because criminals usually attempt to hide the outcomes, tools, and evidence of their crimes in order to hinder law enforcement's attempts to discover and control them. Article 13 requires UN nations that receive requests from other UN countries to take particular procedures to identify, trace, freeze, or seize the profits of crime for ultimate forfeiture. Article 13 describes the request's drafting, filing, and execution. It is essential to recognize that this is a proceeding designed to recover criminal profits.

Article 14 of the UNTOC addresses the final steps of the confiscation procedure and the return of seized property. While dispositions must be made in line with domestic law, the requested state party is required to prioritize requests from other states for the restoration of such assets for use as compensation for crime victims or as remedies for the rightful owners. States parties are also encouraged to consider entering into agreements or arrangements under which revenues could be contributed to the UN to fund UNTOC technical assistance programs or shared with other states parties that assisted in their seizure.

2) Supporting Regulations for Asset Recovery According to UNCAC

The United Nations Convention Against Corruption controls the return of public assets to their origin country.³⁵ This is mentioned in the following articles: First, Article 31 controls the freezing, seizure, and repatriation of assets gained via corruption to their place of origin. Second, in article 54 on the method for restoring assets, it is provided that each state party awarding MLAT according to article 55 of the UNCAC with respect to property obtained via or implicated in a violation of the Convention must comply with its national law. Take whatever actions are required to allow local authorities to carry out confiscation orders issued by a court in the other party's country. Thirdly, Article 55 of the UNCAC, titled "International Cooperation for the Purpose of Confiscation," states that a state party that has received a request from another state party for the confiscation of proceeds of crime, property, etc. located on its territory must: submit a request to the competent authority in order to obtain a confiscation order; and be able to carry out its enforcement³⁶. Fourth, Article 57 of the UNCAC is one of the convention's most original and significant provisions. There would be no deterrent, no faith in the rule of law and criminal justice systems, no effective and efficient government, no integrity among officials, no pervasive sense of fairness, and no popular assumption that corrupt acts would never pay off other than in the form of fruit. The offender is captured, and the stolen property is restored to the parties.³⁷ Consequently, states have a minimal option with respect to the contents of this article; states are required to execute these rules and propose or alter their laws as appropriate.

3.5. MLAT Mechanism in Returning Assets

According to Article 15 of the Indonesia-Switzerland MLAT, asset confiscation must go through four stages. The first is tracking, which involves determining the location of assets

³⁵ Komang Ekayana, 'Returns of Assets in Corruption Criminal Acts as Alternative Restoring State Losses', *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan*, 2.1 (2020), 27-34 <https://doi.org/10.23887/jmppkn.v2i1.82>.

³⁶ Febby Mutiara Nelson and Topo Santoso, 'Plea Bargaining in Corruption Cases: A Solution for the Recovery of Financial Losses by Indonesia?', *Pertanika Journal of Social Sciences & Humanities*, 28.2 (2020).

³⁷ Marni Usman, 'Pengembalian Harta Kekayaan Hasil Tindak Pidana Korupsi Ke Indonesia', *Lex Crimen*, 8.10 (2020).

stored by corrupt perpetrators. Second, the freezing of assets that have been detected temporarily cannot be transferred or moved until the results of a court decision with permanent legal force or the relevant authority are issued. Third, confiscation or revocation of assets forever or confiscation based on a court order or related authority; fourth, return of assets to the requesting country that has the right to receive assets resulting from corruption committed by the competent authorities.³⁸

Returning assets resulting from criminal acts of corruption must go through a mechanism. If the return of assets is done through formal channels, an MLAT is required, and this mechanism is governed by Articles 26, 27, and 28 of the MLAT Indonesia-Switzerland, where this agreement must be in writing and can be sent in an emergency. A request for assistance can be submitted by the Minister of Law and Human Rights based on requests from investigators from the prosecutor's office, the police, or the Corruption Eradication Commission.³⁹

3.6. Agencies Related to MLAT Process

Article 25 of the MLAT between Indonesia and Switzerland in carrying out this MLAT agreement, it is obligatory for each country to appoint a state institution with the authority to carry out this MLAT. However, the agreement does not explain in detail which institutions can serve as the authority to run this MLAT. There are four institutions responsible for implementing MLAT, which are regulated in the MLAT Law:

1) Ministry of Law and Human Rights

Regarding the recovery of assets resulting from corruption crimes in Switzerland and their repatriation to Indonesia, the MLAT implementation process described in this instance is from the perspective of Indonesia as the party requesting assistance. The Minister of Law and Human Rights is recognized as the primary authority for issuing mutual assistance requests. In relation to other countries, Article 1 Paragraph 10 of the MLAT Law stipulates that: "Minister is the minister responsible for law and human rights." According to the Minister of Law and Human Rights' Decree (M.HH.04.AH.08.02 of 2009) on Executing Tasks in the Field of Extradition and MLAT at the Ministry of Law and Human Rights, the Directorate General of Legal Administration Unit is in charge of carrying out the authority of the Minister of Law and Human Rights as the central authority.⁴⁰ Requests for assistance to other countries can be made directly or through diplomatic channels. If the request for assistance is not made through diplomatic channels, it is necessary to coordinate with the relevant agencies. Submitting a request for assistance to a foreign country is based on a request from the Head of the Indonesian National Police, the Attorney General, or the Corruption Eradication Commission.⁴¹ Law enforcement agencies requesting assistance must attach requirements that must be completed, such as the requesting agency's identity, the subject of

³⁸ Titien Herawati Utara and M Taruno, 'Reconstruction of Mechanism for Returning Assets of Corruption at The Center for Asset Recovery of The Prosecutor of The Republic of Indonesia.', *Review of International Geographical Education Online*, 11.4 (2021).

³⁹ Ricardo Santos, 'Procedures For The Implementation Of Mutual Legal Assistance To Recover Assets Resulting From Corruption That Are Rushed Abroad', *Jurnal Hukum Lex Generalis*, 2.1 (2021), 40-56 <https://doi.org/10.56370/jhlg.v2i1.3>.

⁴⁰ Ika Yuliana Susilawati, 'Perampasan Aset Hasil Tindak Pidana Korupsi Di Luar Negeri Melalui Bantuan Timbal Balik (Mutual Legal Assistance)', *Jurnal IUS, Kajian Hukum Dan Keadilan*, 4 (2016).

⁴¹ Rudi Hendra Pakpahan and Aras Firdaus, 'Pembaharuan Kebijakan Hukum Asset Recovery: Antara Ius Constitutum Dan Ius Constituendum', *Jurnal Legislasi Indonesia*, 16.3 (2019), 369-78.

the court examination relating to said assistance, a summary of facts, relevant statutory provisions, descriptions and details of special procedures regarding assistance, the purpose of the assistance requested, and other conditions determined by the requested state.⁴² If the above requirements for asking for help have been met, the minister can send the request to investigators from the police, the prosecutor's office, or the corruption eradication commission, who will send requests for help to the requested country.

2) Indonesian National Police

Law Number 2 of 2002 about the Indonesian National Police says that the police are supposed to be investigators. Based on this, Mutual Assistance can also be asked for, but only to help with searches and seizures, as stated in Article 3 paragraph 2 letter f of the MLAT Law: "Mutual assistance may take the form of carrying out search and seizure requests." Aside from having investigation authority. The Indonesian National Police are also authorized by Law Number 2 of 2002 to assist with police from other countries in investigating and combatting international crimes and represent the Republic of Indonesia in the International Police Organization. Discussing the scope of duties within MLAT, Interpol Indonesia, or NCB-Interpol Indonesia may only participate in the investigation process, such as exams, witness summons, searches, and seizures, as defined in Article 3 paragraph 2 of the MLAT Law. It also relies on the legal regulations of the Requested State; there are some that may be fulfilled by NCB-Interpol, while others need requests for help to be presented via diplomatic channels by the Minister of Law and Human Rights.

3) Attorney General of Republic of Indonesia

The implementation of MLAT in the Attorney General's Office has been regulated in Presidential Regulation Number 38 of 2010 concerning the Work Procedures of the Republic of Indonesia's Prosecutor's Office. In addition to the provisions of Article 29 paragraph 2, Article 11, Article 12, Article 13, Article 15, Article 19, Article 20, and Article 21 of the MLAT Law.⁴³ The Attorney General's Office has a role in each stage of mutual legal assistance, where it acts as an investigator, public prosecutor, and executor. The Attorney General's Office is the only institution that has the authority to implement court decisions. Court decisions that have legal force are still executed by the prosecutor's office, including assets that have been decided by the court. Just as prosecution is the authority of the Attorney General's Office, implementation of court decisions that have permanent legal force is also the authority of the Attorney General's Office. This provision gives the Attorney General's Office the authority to act as a public prosecutor and as the executor of court decisions.

4) Corruption Eradication Commission (KPK)

The Corruption Eradication Commission is empowered by Law Number 30 of 2002 to conduct investigations and prosecutions. This power is equivalent to that of the police at the investigating level and the attorney at the prosecution stage, particularly in situations of criminal acts of corruption. Prosecutors at the KPK are public prosecutors who are appointed and fired by the KPK and are in charge of prosecuting criminal offenses involving corruption. The prosecutor for the KPK is the public prosecutor.⁴⁴ The prosecutor is also responsible for

⁴² Bambang Santoso, 'Recovery of State Losses in Corruption Cases in Indonesia, through the Asset Recovery Model and Mutual Legal Assistance', *International Journal of Innovative Research and Development*, 11.12 (2022).

⁴³ Susilawati.

⁴⁴ Susilawati.

carrying out court rulings that have gained permanent legal force, according to Article 1 paragraph 6 letter a of the Criminal Procedure Code. Since a court order is needed to seize assets related to corruption crimes that were committed abroad, the KPK, which is a branch of law enforcement that can carry out court orders, can ask MLAT to seize assets.⁴⁵

3.7. Asset Recovery that has been Implemented by Indonesia

There are several cases of transferring assets resulting from corruption to Switzerland that the author was able to obtain due to limited access when searching for similar cases:

1) Implementation Irawan Salim Case

The case of a global bank that abused Bank Indonesia Liquidity Assistance The owner and main director of Bank Global, Irawan Salim, is suspected of committing a criminal act of corruption whose case is under investigation. Irawan Salim fled abroad before being arrested and prosecuted.⁴⁶ Cooperation between the Indonesian government and Interpol resulted in the discovery that Irawan Salim has a bank account in Switzerland. To pursue the results of Irawan Salim's corruption in Switzerland, the Indonesian government submitted an application for an MLAT agreement with Switzerland to freeze Irawan Salim's USD 9.9 million account. However, the Swiss government does not recognize the decision in absentia in its court decision, bearing in mind that the suspect's whereabouts have not been confirmed and he can still be arrested and tried according to the laws in force in Indonesia.⁴⁷

2) Implementation ECW Noelo Case

Another case of proceeds of corruption kept in Switzerland is the case of ECW Neloe, who is the Director of Bank Mandiri and who granted loan applications to five companies without going through the procedures and requirements in accordance with the provisions made by Bank Mandiri, resulting in non-payment of loans granted by Bank Mandiri to the five companies. ECW Neloe is suspected of abusing his position to harm state finances and of committing a criminal act of corruption in providing Bank Mandiri loans to five creditor companies. When the case was in the legal process at the South Jakarta District Court, through the cooperation of the Financial Intelligence Unit, it was discovered that ECW Neloe had a bank account in Switzerland.⁴⁸ On the basis of this information, the Indonesian government sent an MLAT application to the Swiss government to freeze ECW Neloe's bank account and ask the bank for information and documents to help with money laundering cases in Indonesia.

Based on this request, Neloe's ECW bank account in Switzerland was frozen. However, the information and documents requested from Swiss banks have not been fulfilled. The process of the ECW Neloe corruption case at the Supreme Court Cassation level with Number 1144/K/Pid/2006 established that ECW Neloe had sufficient evidence to commit a criminal act of corruption and was sentenced to 10 years in prison and a fine of 500 million rupiah. Based on this decision, the Attorney General's Office submitted a second MLAT application to

⁴⁵ Santoso.

⁴⁶ Gledys Deyana, Matius Evan Anggara, and Lulu Yulianti, 'Implementation of Indonesia's Mutual Legal Assistance Policy Regarding Asset Recovery of Corruption Crimes', 2020, 1, 79-93.

⁴⁷ Ifelou J Koni, 'Mechanisms for Recovery and Repatriation of Stolen Assets under the United Nations Convention against Corruption', *Nigerian LJ*, 20 (2017), 242.

⁴⁸ Deyana, Anggara, and Yulianti, I.

Switzerland, which was suspected of originating from the proceeds of corruption in Indonesia. However, as of now, ECW Neloe's assets cannot be transferred to Indonesia.⁴⁹

3.8. Obstacles in the implementation of MLAT Indonesia - Switzerland

1) Case Handling and Evidence Process

So far, MLAT's efforts in corruption cases, especially previous cases, have not been supported by the handling of cases that focus on the confiscation of assets.⁵⁰ As in the case of Irawan Salim, where, according to Switzerland, the court's decision was based on the principle of in absentia. Due to the lack of awareness regarding the importance of recovering assets at that time, the assets that should have been returned to the country have not been paid to date. With less urgency, the focus of dealing with corruption cases is on imposing penalties on perpetrators and recovering assets. Assets that have been identified are not immediately requested to be frozen and blocked from the start of the investigation to the prosecution.⁵¹

2) Response from Requested State

There are also obstacles to implementing MLAT related to the state's response being requested. Countries where corruptors keep assets resulting from corruption are developed countries such as Switzerland, which has the title "Safe Haven Countries".⁵² Countries like Switzerland have an excellent and strict banking secrecy system for protecting the assets, data, and identities of their customers. Whereas, according to the UN Model on MLAT, refusal of assistance cannot be carried out solely on the basis of bank secrecy, as long as the handling of cases and the verification process have succeeded in showing that an asset is indeed the proceeds of a crime, then recovery of said asset can be carried out.⁵³

3) MLAT Submission

Furthermore, in terms of the MLAT application submission flow, it must go through long stages and tends to be less effective. One of the indications is that an MLAT application before being submitted to the requested country must go through the central authority according to the articles in the MLAT Indonesia-Switzerland and Article 9 MLAT Law, where the central authority is the Ministry of Justice and Human Rights.⁵⁴ Law enforcers and the Central Authority must coordinate with regards to a crime and formulate a request for assistance to be submitted until the two institutions reach an agreement on a case. Coordination between the two institutions is often carried out more than once or even several times before the MLAT application is finally submitted to the requested country.

⁴⁹ Herman Katimin and others, 'Urgensi Ratifikasi Perjanjian Bantuan Hukum Timbal Balik Dalam Masalah Pidana Melalui Keputusan Presiden Terhadap Pengembalian Asset-Asset Hasil Kejahatan Tindak Pidana Korupsi Antara Republik Indonesia Dan Konfederasi Swiss: Array', *Case Law*, 1.1 (2020), 1-1 <https://doi.org/10.25157/caselaw.v1i1.2286>.

⁵⁰ Santos.

⁵¹ Abdulrahman OJ Kaniki, 'The Role of Criminal Investigation in Facilitating Asset Recovery in Economic Crime in Tanzania', *The Eastern African Law Review*, 48.1 (2022).

⁵² Santos.

⁵³ Tommaso Trinchera, 'Confiscation and Asset Recovery: Better Tools to Fight Bribery and Corruption Crime' (presented at the Criminal Law Forum, Springer, 2020), XXXI, 49-79 <https://doi.org/10.1007/s10609-020-09382-1>.

⁵⁴ Santos.

4. Conclusion

The MLAT agreement between Indonesia and Switzerland has the scope of the mechanism for returning assets resulting from corruption, namely in the discussion in Article 15 of MLAT Indonesia-Switzerland the return of assets is carried out in 4 stages, the first is tracking by authorized bodies such as the Corruption Eradication Committee or state finance agencies. Second, the freezing of assets that have been confirmed as assets transferred by the perpetrator to the Requested Country. Thirdly Confiscation, in this deprivation is carried out based on a court decision that is permanent. Fourth, return of assets to the requesting country based on the decision of the competent authority.

There are two major cases that have been requested by MLAT by Indonesia to the Swiss state to be able to return their assets, namely the case of Irawan Salim, and ECW Noelo. However, in its implementation, Indonesia experienced various obstacles. where the obstacles were Case Handling and the Proof Process which experienced difficulties because many previous corruption cases did not have a focus on investigation and prosecution so that they experienced difficulties when submitting them to the Swiss state. the response of the Swiss state, especially bank institutions located in Switzerland, strictly closed access on the grounds of customer privacy security. Not only that, the inefficient submission of MLAT causes difficulty in returning assets because it has an element of political interest in it.

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