Journal of Indonesian Legal Studies
ISSN 2548-1584 (Online) 2548-1592 (Print)
Vol. 9 Issue 2 (2024) 537-570
DOI: https://doi.org/10.15294/jils.v9i2.877
Online since: November 30, 2024

Journal *of* Indonesian
LEGAL STUDIES
https://journal.unnes.ac.id/journals/index.php

Enhancing Cross-Border Justice: Facilitating Asset Recovery from Corruption Between Indonesia and Australia Through Mutual Legal Assistance

Joko Setiyono [a] ✉, Eduard Quiko [b], Andini Kusuma Putri [a], Darminto Hartono [a]

[a] Faculty of Law, Universitas Diponegoro, Semarang, Indonesia
[b] Political Science, College of the Ozarks, Missouri, United States.

✉ Corresponding email: *jokosetiyono@lecturer.undip.ac.id*

Abstract

The level of corruption crimes that are committed in today's society is growing from year to year, and it is accompanied by other types of criminal activity, such as the concealment of assets that result from corruption in other countries. In order to eradicate a variety of crimes that have a transnational character, particularly corruption, one of the actions that can be made is to take assets that have been developed due to corruption in other countries. This can be done through Mutual Legal Assistance. Regulations about MLA have been enacted due to the passage of Law Number 1 of 2006, which discusses providing mutual assistance in criminal matters. Mutual Legal Assistance is considered to be the first stage of law enforcement, particularly in the process of recovering state assets that have been stolen as a result of corruption crimes. As a result, cooperation with other nations is required, such as the cooperation between

Indonesia and Australia, which aims to return state assets that have been stolen due to corruption crimes hidden in Australia.

KEYWORDS *Mutual Legal Assistance, Return of Assets, Criminal Acts of Corruption*

Introduction

Complex cases of corruption and money laundering typically necessitate asset recovery initiatives that extend beyond national boundaries. Certain offenses or components of offenses can occur across different jurisdictions: companies that engage in bribery for contracts might be based or incorporated in a location separate from where the bribe was executed, and officials who accept bribes may conceal their illicit earnings in additional jurisdictions. The international financial sector presents a compelling environment for individuals aiming to obscure the origins of illicit funds and complicate efforts to trace assets. Intermediaries like accountants, lawyers, or trust and corporate service providers facilitate access to the financial sector and can obscure the participation of corrupt officials in transactions or asset ownership. The entities referred to as "gatekeepers" could present an additional avenue for securing funding, which may lead to an increase in the number of jurisdictions engaged in the process[1].

[1] StAR, "International Cooperation: Engagement with Foreign Jurisdictions for Asset Recovery," Stolen Asset Recovery Initiative (StAR), 2024, https://star.worldbank.org/focus-area/international-cooperation. *For further discussion of some cooperation practices, see also* Kenan Febrian Ganda Permana, Olga Amelia Ayu Anggreini, and Pavlo Zenaida. "International Cooperation Between Indonesia and Russia in The Eradication of Corruption (Transnational Crime)." *Jurnal Scientia Indonesia* 8, no. 2 (2022): 223-250; Ridwan Arifin, et al. "A Discourse of Justice and Legal Certainty in Stolen Assets Recovery in Indonesia: Analysis of Radbruch's Formula and Friedman's Theory." *Volksgeist: Jurnal Ilmu Hukurn dan Konstitusi* 6, no. 2 (2023): 159-181; Asmarani Ramli, et al. "The Importance of Non-Conviction Based (NCB) Regulations for Asset Confiscation in Illegal Investment." *Journal of Law and Legal Reform* 5, no. 1 (2024): 1-26.

In this context, the theory of transnational governance networks plays a significant role through cognitive, prescriptive, and technical approaches[2]. Cognitive approaches facilitate the collection and integration of information, enabling the dissemination of policies across borders. The prescriptive approach operates by creating rules or standards aimed at filling regulatory gaps across different jurisdictions, whereas the technical approach enhances cross-border cooperation, especially in law enforcement issues.

Corruption-the abuse of power for personal gain and related violations-causes serious harm[3]. Corruption results in significant economic losses, undermines the integrity and efficiency of public administrative functions, erodes public trust in governmental bodies, exacerbates the rule of law and democracy, distorts fair economic competition, and impedes development[4]. Corruption can serve as a tool used by organized crime to exert influence and infiltrate economic, administrative, and political structures[5]. Corruption is hazardous when carried out systematically or transnationally[6]. Therefore, combating corruption in international economic relations must be pursued through practical measures[7].

Instances of corruption frequently cross-national boundaries, including numerous countries in their scope of influence[8]. Individuals who commit crimes frequently try to conceal their illicitly obtained wealth by moving it overseas, typically to financial centers in industrialized countries with extensive legal safeguards. This pattern highlights the culpability of technology improvements

---

2 Olivier Nay, "How Do Policy Ideas Spread among International Administrations? Policy Entrepreneurs and Bureaucratic Influence in the UN Response to AIDS," *Journal of Public Policy* 32, no. 1 (2012): 53–76.

3 Oxana Karnaukhova, Alexandra Udovikina, and Bryan Christiansen, *Economic and Geopolitical Perspectives of the Commonwealth of Independent States and Eurasia* (IGI Global, 2018).

4 Sidik Sunaryo and Asrul Ibrahim Nur, "Legal Policy of Anti-Corruption Supervisor Design: A New Anti-Corruption Model in Indonesia," *Bestuur* 10, no. 2 (2022): 137–58.

5 Giacomo Di Gennaro and Roberta Aurilia, "Corruption and Policy-Making: How Corruption Models Favor Mafias – The Case Study of Italy," in *Corruption*, ed. Josiane Fahed-Sreih (Rijeka: IntechOpen, 2022), Ch. 9.

6 Héctor Olásolo, *International Criminal Law, Transnational Criminal Organizations and Transitional Justice: Transnational Criminal Organizations and Transitional Justice* (Brill, 2018).

7 Maskun, "Combating Corruption Based on International Rules," *Indonesia Law Review* 4, no. 1 (2014): 55–66.

8 Rajeev K. Goel and James W. Saunoris, "Corrupt Thy Neighbor? New Evidence of Corruption Contagion from Bordering Nations," *Journal of Policy Modeling* 44, no. 3 (2022): 635–52.

and communication networks, which facilitate the evasion of justice and the relocation of assets. Such transnational collaboration brings to light the necessity of combined international measures to combat corruption, considering the fact that corruption is a global phenomenon and the difficulties it presents to individual jurisdictions[9].

In order to effectively address both domestic and foreign criminal activity, one of the most critical factors is practical international cooperation[10]. Because actions taken unilaterally are insufficient, it is essential to recognize that multilateral and bilateral alliances serve as crucial tools in the fight against corruption. Mutual legal help, represented by Indonesia's implementation of Law No. 1 of 2006 concerning Mutual Legal help in Criminal Matters, encourages collaboration between nations in sharing information and facilitating judicial procedures. To prevent corruption and other associated crimes, this framework makes it possible to exchange valuable intelligence and legal help, both of which are essential[11,12].

Furthermore, according to the United Nations Convention against Corruption (UNCAC) of 2003, extradition treaties are supplemented by Mutual Legal Assistance (MLA) in Criminal Matters, which is essential in retrieving assets obtained by corrupt acts. As a result, it is of the utmost importance to negotiate Mutual Legal Assistance Agreements with nations that provide safe havens for corrupt persons, such as Australia, Singapore, Switzerland, and Hong Kong. Implementing these accords strengthens efforts to bring back illegal assets and hold those responsible accountable across international borders[13,14].

---

[9] Salman Bahoo, Ilan Alon, and Andrea Paltrinieri, "Corruption in International Business: A Review and Research Agenda," *International Business Review* 29, no. 4 (2020): 101660.

[10] Matti Joutsen, "International Cooperation against Transnational Organized Crime: The Practical Experience of the European Union," *Resource Material Series*, no. 59 (2002): 394–428.

[11] Muhammad Yudha Prawira and Fatra Alamsyah, "The Implementation of Mutual Legal Assistance between Indonesia and Switzerland Regarding Asset Recovery," *Indonesian Comparative Law Review* 5, no. 2 (2023): 58–74.

[12] Ahmad Sobari, "Mla in Criminal Matters as Asset Recovery's Tool," *Mimbar Hukum* 26, no. 2 (2014): 297–307.

[13] Sulaiman Rasyid and Joko Setiyono, "Extradition Arrangements in Efforts to Eradicate Corruption Crimes in Indonesia," *Jurnal Dinamika Hukum* 21, no. 2 (2022): 301–3310.

[14] Jamin Ginting, "Roles of the Mutual Legal Assistances and Extradition Agreements in the Assets Recovery in Indonesia," *Indonesian Journal of International Law* 9, no. 4 (2011): 565–82.

Indonesia's dedication to upholding the rule of law and rebuilding public trust is shown in the concerted efforts made as part of the fight against corruption in the country. Several legislative measures, most notably Law No. 31 of 1999 in conjunction with Law No. 20 of 200, have been enacted to not only punish those who commit offenses but also drive societal transformation through psychological triggers[15]. In the end, the return of stolen assets allows for correcting fiscal imbalances and promoting economic growth, which eventually benefits the general population[16].

Indonesia's efforts to combat corruption are strengthened by collaborating with peers from other countries through channels of mutual assistance[17]. By utilizing frameworks for mutual legal aid, the Indonesian government is working toward repatriating assets stored overseas, with the end goal of reducing the financial losses experienced due to corrupt acts. The worldwide consensus on combating corruption and the collective commitment to ensuring integrity and transparency in governance are highlighted by these collaborative activities to highlight the global consensus.

Legal research is a complex undertaking that incorporates various methodologies and techniques to comprehend and interpret legal concepts and principles. Normative legal research is a notable approach within the field of law that employs a prescriptive stance to examine legal phenomena[18,19]. This approach utilizes primary and secondary sources of legal materials in order to formulate recommendations and normative propositions. The present study investigates germane legal issues by employing normative legal research and utilizing a combination of primary legal texts and scholarly works to draw informed conclusions and analyses.

Scholars, including Soerjono Soekanto[20], frequently refer to normative legal research as "Literature Research". It consists of a methodical examination of legal literature in order to clarify the fundamental principles, standards, and

---

[15] Ousu Mendy, "The State and Prospect of Legislation Number 39 Year 1999 of Indonesia," *International Journal of Humanities, Management and Social Science (IJ-HuMaSS)* 6, no. 1 (2023): 13–22.

[16] Suramin, "Indonesian Anti-Corruption Law Enforcement: Current Problems and Challenges," *Journal of Law and Legal Reform* 2, no. 2 (2021): 225–242.

[17] Zakia Syifa, "Open Government Partnership: Indonesian Transformative Effort to Deal with Corruption," *Jurnal Hubungan Internasional* 10, no. 1 (2017): 77–89.

[18] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media, 2017).

[19] Muhammad Haris Zulkarnain, "Pembentukan Lembaga Peradilan Khusus Pemilihan Umum Dalam Rangka Mewujudkan Electoral Justice System," *Progressive Law and Society* 1, no. 1 (2023): 27–41.

[20] Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia, 1989).

regulations that regulate a specific legal field. By thoroughly examining academic writings, court decisions, statutes, treaties, legal texts, and court decisions, this methodology generates a holistic comprehension of legal principles and their practical implementation. Researchers can identify voids, discern patterns, and propose normative frameworks to effectively address legal challenges by synthesizing diverse legal sources.

The methodology utilized to gather legal materials for this research is a literature review, which entails the systematic examination and synthesis of pre-existing legal scholarship. By conducting an exhaustive examination of the literature, scholars amass a vast collection of relevant legal materials to their research topic. This includes scholarly articles, doctrinal treatises, legislative enactments, and judicial opinions. By conducting an extensive review of legal literature, this study lays the groundwork for subsequent interpretations and analyses, allowing scholars to cultivate nuanced understandings of the investigated subject.

Scholars conduct normative legal research using qualitative analysis techniques substantiated by deductive reasoning logic. Qualitative analysis encompasses a methodical exploration and interpretation of qualitative data, including textual information extracted from scholastic writings and legal texts. Scholars utilize a range of analytical instruments, such as content analysis, thematic classification, and comparative analysis, to extract significant findings and identify latent patterns in the data.

Using deductive reasoning is paramount in providing direction to the analytical process, during which scholars construct hypotheses or theoretical frameworks by relying on well-established legal principles and precedents. Researchers use deductive reasoning to establish logical connections between cases or scenarios under investigation and overarching legal principles. This process aids in the development of normative propositions and recommendations. The utilization of this deductive methodology guarantees logical consistency and thoroughness in the examination, enabling scholars to methodically assess the ramifications of legal standards and principles across various contexts.

Background of Making Mutual Legal Assistance in the Return of Assets Resulting from Corruption Crimes between Indonesia and Australia

Corruption, considered criminal conduct, is a severe problem Indonesia faces and has become a national concern[21]. Because its development is rising from year to year both in Indonesia and around the world and on a big scale, corruption is considered a significant problem deemed a "serious crime"[22]. This is because it must be handled with "extraordinary treatment" to keep it from becoming a severe problem. Some examples of instances that involve two countries in terms of corruption include state assets that are hidden or rushed and transferred abroad. In most situations, these assets are rushed to the financial centers of industrialized countries with legal system protection. It is expected to find cases that pull two countries together regarding corruption[23]. This circumstance demonstrates the motivation of those who commit crimes of corruption, who carry out their actions based on improvements in technology and communication to facilitate the easy escape of their state assets to other nations so that they can continue their criminal activities. This cooperation demonstrates that transnational elements are carried out to escape or hide the outcomes of the illegal act of corruption. This is because the act included two countries and crossed the territorial boundaries of a country[24].

While corruption has existed since the beginning of human history, it has a strong foundation in human civilization. Between 3100 and 2600 BC, the first dynasty of ancient Egypt was known for the corruption within its judicial system. The term "corruption" was first used by the ancient Greeks, who

---

[21] Ranto Sabungan Silalahi, "Corruption in Match-Fixing Within Sports: The Need to Regulate Future Legislation (A Comparative Study and Lesson from the Australian System of Law)," *Indonesia Law Review* 10, no. 1 (2020): 45–58.

[22] Benjamin B Wagner and Leslie Gielow Jacobs, "Retooling Law Enforcement to Investigate and Prosecute Entrenched Corruption: Key Criminal Procedure Reforms for Indonesia and Other Nations," *University of Pennsylvania Journal of International Law* 30, no. 1 (2008): 183–265.

[23] Alexander Cooley and J. C. Sharman, "Transnational Corruption and the Globalized Individual," *Perspectives on Politics* 15, no. 3 (2017): 732–53.

[24] Satria Unggul Wicaksana Prakasa, Basuki Babussalam, and Agus Supriyo, "Transnational Corruption and Its Impact on Indonesian Jurisdiction," in *Proceedings of the 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020)* (The 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020), Purwokerto, Indonesia: Atlantis Press, 2020).

associated it with various connotations, including the loss of physical shape, integrity, or moral virtue. The term "corruption" was understood in various ways by ancient Greeks, with some interpretations alluding to the loss of physical shape, integrity, or moral quality. There were, however, substantial conceptual gaps, such as Aristophanes' emphasis on corrupting words in the context of linguistic purity and his criticism of Socrates for allegedly corrupting the youth. Both of these examples are examples of problematic conceptual gaps. However, a Greek historian, Polybius, viewed corruption as the natural movement from one form of administration to another. He said that corruption happened naturally[25].

Since the beginning of time until today, corruption has remained a hurdle that cannot be overcome completely. Although allegations of conflicts of interest and dishonesty directed at prices are significant, it is essential to note that this is not only an issue of morals and virtue. The Greek culture of the fifth century was the origin of democracy, which was characterized by widespread corruption. The best Greek poets appeared to teach in the Odyssey that one should not go to the palace of kings or nobles without bringing gifts and that it was considered impolite to refuse gifts even if offered. These personal interests included slavery and clientelism, as well as a political system that required unpaid public offices, which did little to incentivize good official behavior. However, there were laws in Athens that punished those who received income for personal gain at the expense of collective interests. It is important to note that these personal interests included slavery and clientelism.

A solution to this problem has been proposed, which involves the establishment of cooperation between countries to facilitate the return of assets that are the result of corruption crimes and handle the process of investigation, prosecution, and hearing in court on a matter that arises in both the Requesting State and the Requested State[26]. This is because the rise of corruption cases in Indonesia is related to the concealment of the proceeds of crime by perpetrators in neighboring countries, which causes Indonesia to face difficulties in tracking the assets resulting from these crimes. When it comes to cooperation in law and criminal justice, one of the challenges that arises is the issue of jurisdiction over individuals who are applying criminal law. This process begins with the stage of investigation, continues through the judicial process, and culminates in the implementation of punishment for crimes committed by individuals subject to

---

[25] Damla Kuru, "Perspective Chapter: From Ancient Times to Modern World – Corruptus," in *Corruption*, ed. Josiane Fahed-Sreih (Rijeka: IntechOpen, 2022), Ch. 13.

[26] Saida Tongalaza, "The Need for International Cooperation in Criminal Matters: Case of Madagascar," *Arena Hukum* 8, no. 1 (2015): 35–53.

other countries' jurisdiction. A Mutual Assistance Agreement in Criminal Matters is required if the return of assets obtained due to criminal conduct is required through a mechanism[27]. If the return of assets is to be accomplished through formal channels, then the agreement must be in place. Therefore, Mutual Legal Assistance is considered one of the most successful types of cooperation in recovering assets obtained as a result of the criminal act of engaging in corrupt behavior[28].

Because criminal activity exerts a significant amount of influence within a nation, the concept of mutual legal assistance was developed to combat and eliminate various international crimes. In several international gatherings and United Nations Conventions, such as the UNCAC, a strong emphasis is placed on providing mutual legal assistance[29]. It is recommended that countries that have signed the document undertake international collaboration in the form of MLA to eliminate corruption[30]. The concept of Mutual Legal Assistance refers to an agreement established between nations to eradicate various forms of transnational organized crime. What led to the establishment of the MLA in the first place? The purpose of the law is to assist Indonesian law enforcement in their pursuit of assets from suspects located outside of the country and to combat the growing trend of transnational crime. The goal of international cooperation in the form of MLA is to make it easier for countries that have been victimized to recover their assets, to make it easier for assets to be returned, and to eliminate safe areas where corrupt individuals can conceal their money[31].

Formally, in order to be able to enter into Cooperation between countries in the form of MLA, it is necessary to request Mutual Legal Assistance, either

---

[27] William C. Gilmore, *Mutual Assistance in Criminal and Business Regulatory Matters*, A Grotius Publication (Cambridge, MA: Cambridge University Press, 1995).

[28] Muhyi Mohas Mohas et al., "The Indonesia Government's Strategy in Arrest and Confiscation of Criminal Corruption (Corruptor) Assets Abroad," *Jurnal Dinamika Hukum* 21, no. 3 (2022): 432–45.

[29] Cecily Rose, "The Limitations of the United Nations Convention against Corruption," in *International Anti-Corruption Norms: Their Creation and Influence on Domestic Legal Systems*, ed. Cecily Rose (Oxford: Oxford University Press, 2015).

[30] Ridwan Arifin, Sigit Riyanto, and Akbar Kurnia Putra, "Collaborative Efforts in ASEAN for Global Asset Recovery Frameworks to Combat Corruption in the Digital Era," *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (2023): 329–343.

[31] Anna Christina Sinaga et al., *Mutual Legal Assistance to Strengthen Indonesia-ASEAN Forest Governance*, vol. 77 (CIFOR, 2014), https://www.cifor.org/knowledge/publication/5050/.

as a Requesting State or as a Requested State[32]. This request must be carried out in a manner facilitated and coordinated by the Central Authority appointed by law, which can be done through diplomatic channels or directly. Even though law enforcement agencies can contact one another informally and directly, official requests for mutual aid must go through the Central Authority. Precisely to guarantee the legitimacy of the mutual aid that was put into place. During the process, the Central Authority will analyze, verify, and engage with relevant parties, including domestic applicant agencies and the central authorities of other countries, to guarantee that assistance is provided in a manner that conforms with applicable laws and regulations.

Procedure for Requesting Assistance by Indonesia to Foreign Countries

To ensure that Indonesia and Australia can effectively collaborate with one another, the procedure for implementing mutual legal aid in the repatriation of assets that have resulted from corruption between the two countries has been painstakingly described. The Chief of the National Police, the Attorney General, or the Corruption Eradication Commission can initiate the procedure. The procedure begins with applying to the Minister of Law and Human Rights, the Central Authority. This all-encompassing application includes essential information such as the identification of the institution making the request, the subject matter and nature of the request, relevant court decisions, and the names and roles of institutions involved in the investigative, prosecution, and judicial procedures. In addition, it contains a summary of the facts, the pertinent legal laws, the specific procedures surrounding assistance, and the intended objective, which includes considerations regarding confidentiality. It is also possible to include additional conditions mandated by the particular state. The last step is for the Minister of Law and Human Rights to communicate these demands directly or diplomatically. In the latter case, the Minister of Foreign Affairs works with the Minister of Law and Human Rights. This coordination is frequently required due to the country's needs, which is the destination of the requests.

After Indonesia has received a response from the state that was requested, which is usually facilitated by the state's central authority or Ministry of Foreign

[32] Miko Aditiya Suharto and Maria Novita Apriyani, "The Urgency of Mutual Legal Assitance in Criminal Matters (MLA) in Action Against of Corruption," *Nusantara Science and Technology Proceedings* (2023): 531–37.

Affairs, Indonesia may be tasked with meeting any additional requirements or addressing any shortcomings included in the initial request. It is through this iterative process that conformity with the protocols and standards set by both countries is accomplished. The subsequent transfer of significant information to appropriate agencies is a natural consequence, which helps ensure that the legal procedures run without any interruptions[33].

Regarding the seizure of assets, the process outlined in Article 22 and Article 23 of the Mutual Legal Assistance Law outlines a particular course of action that might be taken[34]. The confiscation of assets to be restored to the state is first an obligation mandated by a court decision with a permanent legal effect. After that, the Attorney General applies to the Minister, who acts as the central authority and asks for assistance from the state that was requested to carry out the direction the court issued. It is important to note that although the Corruption Eradication Commission does not have the explicit jurisdiction to begin such petitions, Article 9 of the MLA Law does give this authority in situations of corruption, broadening the area of applicants eligible for the program. Therefore, the subsequent execution of the Decision is contingent upon the legal framework and stipulations of the State that has requested it[35]. The Minister of Law and Human Rights, who is acting as the Central Authority, is responsible for managing and disseminating all correspondences in order to guarantee the integrity of the procedures and the adherence to the norms that have been established.

Procedure in Request for Assistance by Foreign Countries to Indonesia

The core principle behind mutual aid requests revolves around their submission through either diplomatic channels or direct means. This holds true for requests seeking legal assistance from the Indonesian government. Governed by Article 28 of the MLA Law, Indonesia outlines specific provisions for such requests. These provisions encompass a comprehensive array of elements, including the purpose and details of the assistance sought, the involved agency,

---

[33] Jauhar Nashrullah, "Interpretation of the Position of the Corruption Eradication Commission as an Executive Agency," *Kanun Jurnal Ilmu Hukum* 25, no. 1 (2023): 53–77.

[34] Sahuri Lasmadi, Elly Sudarti, and Nys Arfa, "Asset Seizure of Money Laundering Crimes Arising from Corruption in the Perspective of Legal Certainty and Justice," *Pandecta Research Law Journal* 18, no. 2 (2023): 352–374.

[35] Yuliana and Mujiono Prasetyo, "Criminal Accountability of State Officials Committing Political Corruption in Indonesia," *Arena Hukum* 15, no. 1 (2022): 160–175.

the official overseeing the relevant proceedings, and a thorough description of the criminal activity. Additionally, they encompass the legal framework, potential penalties, and specifics regarding the suspected criminal acts.

In cases where assistance is sought to enforce a court decision, further particulars are required. These include procedural details, any necessary conditions, such as oaths or promises, confidentiality requirements, and desired timelines for execution. Moreover, the request may entail identifying individuals capable of providing pertinent information or testimony, along with specifying the nature of the information needed and the evidence to be submitted. In essence, the process of mutual aid requests underscores a meticulous and systematic approach, ensuring effective collaboration in legal matters between nations.

The request for assistance to the Government of the Republic of Indonesia is received by the Minister of Law and Human Rights as the central authority. If the conditions have been met, the request is forwarded to the Chief of Police or the Attorney General. If the conditions still need to be met, the Minister may send a request to complete it. This is in contrast to the request process, which the Minister handles. If denied, the Minister must communicate the reasons for the denial to the nation that made the request. For the Attorney General's Office, all requests for assistance from outside Indonesia to Indonesia from the Central Authority will be sent to the Bureau of Legal and Foreign Cooperation, which will then be forwarded to the appropriate unit.

The scope of criminal legal assistance refers to the boundaries within which authorized entities across various nations engage in one or more activities to support one another in resolving criminal cases that involve foreign elements. The denial of mutual legal assistance in criminal cases can take place under particular conditions that are clearly defined in the applicable legal framework. Absolute refusal is applicable when the request relates to the investigation, prosecution, or punishment of an offense deemed political, whether because of the offense's inherent characteristics or the context in which it occurred. The applicability extends to situations where the request pertains to actions or omissions that, if they had taken place in the requested state, would be classified as military offenses instead of general criminal offenses according to its legal framework. Support can be refused if there are significant reasons to suspect that the request aims to discriminate against a person due to their race, religion, gender, ethnicity, nationality, or political beliefs. In a similar vein, a refusal is justified if the individual in question has been convicted, acquitted, or pardoned by an appropriate court or authority in either the requesting or requested

jurisdiction or if they have completed the sentence mandated by law for the offense at hand or a related offense arising from the same act or omission[36].

Refusal can arise when the request pertains to actions or omissions that are not classified as criminal offenses under the laws of the requested state unless the domestic law allows for assistance, even in the absence of dual criminality. Support could be refused if providing it would compromise the sovereignty, security, public order, public interest, or vital interests of the state making the request. Furthermore, a refusal is warranted when the requesting state does not provide assurances of reciprocal compliance with analogous requests from the requested state in the future or cannot guarantee that any materials acquired through the assistance will be utilized solely for the designated criminal matter without additional consent. Assistance may be denied if the requesting state does not ensure the return of any items acquired upon the case's conclusion, if the requested state requests such a return, or if granting the assistance would compromise an ongoing criminal investigation or necessitate actions that conflict with the laws of the requested state.

Discretionary refusal, conversely, operates within a framework of more adaptable conditions. The requested state may choose not to assist if the requesting state does not adhere to important terms of the applicable treaty or relevant arrangements. Support may be denied if it poses a potential risk to the safety of any person, regardless of whether they are within or outside the borders of the requested state. Additionally, the state in question may refuse assistance if it assesses that meeting the request would place an undue strain on its resources. In every scenario, regardless of whether the refusal is absolute or discretionary, the fundamental principles consistently involve respect for sovereignty, compliance with domestic laws, and the safeguarding of the essential interests of the requested state.

In its most basic form, Mutual Legal Assistance is one of the five modes of international cooperation outlined in the UNCAC from 2003. Implementing agreements for mutual legal assistance might occur either bilaterally or multilaterally. Suppose the Mutual Legal Assistance agreement is carried out bilaterally. In that case, negotiations on the agreement's content are carried out by an integrated team consisting of the Ministry of Foreign Affairs, the Ministry of Law and Human Rights, the Police, and the Attorney General's Office of the Republic of Indonesia. An integrated team is responsible for carrying out the negotiations. The agreement between Indonesia and Australia was signed in

---

[36] Hải Anh Vũ, "Practices of Mutual Legal Assistance in Criminal Matters between Vietnam and Southeast Asia Countries," *International Journal of Criminal Justice Sciences* 18, no. 1 (2023): 64–78.

Jakarta on October 27, 1995, and ratified on a legal basis, namely Law Number 1 of 1999 concerning the Ratification of the Agreement between the Republic of Indonesia and Australia on Mutual Legal Assistance in Criminal Matters (Treaty Between The Republic of Indonesia and Australia on Mutual Legal Assistance in Criminal Matters) is one form of bilateral agreement implemented by Indonesia[37].

The summary of the bilateral agreement between Indonesia and Australia on mutual assistance states that the agreement can be put into effect so long as it does not violate the legal regulations that are in place in either Indonesia or Australia. This is the only condition that must be met for the agreement to be enforceable. In this context, the rule of law pertains to mutual aid. Indonesia already possesses Law No. 1 of 2006 about mutual aid in criminal matters, which was enacted to facilitate the agreement's implementation. In the Australia Mutual Assistance in Criminal Matters 1987, which was revised in 1988 and 2004, respectively, there are regulations about mutual assistance established in Australia[38]. Parties to the agreement, whether they be bilateral or multilateral, can request assistance from the Government of Indonesia based on the parameters that have been agreed upon in the agreement. In addition, the Government of Indonesia can request assistance from other nations that are parties to the agreement. From a theoretical standpoint, managing transnational crime necessitates collaboration with other nations. This is because this has been demonstrated to be a benchmark for the success of national law enforcement in dealing with transnational crime. The agreement is not absolute if there is no agreement regarding the prerequisites. This is because cooperation between law enforcement agencies can be carried out based on the principle of reciprocity called reciprocity.

A provision in the Mutual Legal Assistance Agreement between Indonesia and Australia states that only crimes that violate bribery laws are considered violations of integrity laws. As a result, the scope of mutual assistance in this agreement is limited to the illegal conduct of bribery corruption. On the other hand, corruption of other forms than bribery might be supplied at the discretion of the state that has sought it. When it comes to the provision of such assistance, it is possible to make efforts to search for, detain, and seize the proceeds of a crime whose execution shall be carried out by the law of the state that is being

---

[37] Jan Samuel Maringka, "Extradition In Criminal Justice System Related To Foreign Jurisdiction," *Pattimura Law Journal* 1, no. 2 (2017): 79–97.

[38] Tom Obokata and Brian Payne, *Transnational Organised Crime: A Comparative Analysis*, Routledge Research in Transnational Crime and Criminal Law (New York: Taylor & Francis, 2016).

requested or the law of the state that is making the request, provided that the law of the requesting state does not contradict with the law of the state that is being requested. There is little doubt that the Mutual Legal help Agreement between Indonesia and Australia makes it possible for help to be offered for actions pertinent to those related to this agreement, both before and after the agreement comes into force. Because of this, the state that has made the request is eligible to receive Mutual Legal Assistance. This is because bribery is included in one type of corruption crime, but on the other hand, it is possible to assist with other types of corruption crimes at the discretion of the requested State so that the implementation of Mutual Legal Assistance, which includes the act of searching, detaining and confiscating the proceeds of crime to seize assets resulting from corruption can also be assisted criminal acts before the entry into force of this agreement. This provision can maximize the efforts of the state's government requesting to return assets obtained due to corruption crimes in the state making the request.

The background of the Mutual Legal Assistance Cooperation between Indonesia and Australia based on Law Number 1 of 1999 concerning the Ratification of the Agreement between the Republic of Indonesia and Australia concerning Mutual Assistance in Criminal Matters which was signed on October 27, 1995 in Jakarta is that this agreement has the aim of increasing practical cooperation with the aim of enforcing the law and implementing justice between the two countries which includes: collection of evidence/evidence and to obtain testimony, including the execution of the rogatoir letter; submission of documents and other records; location and identification information of the person; execution of applications in search and seizure; efforts to seek, detain, and confiscate the proceeds of crime; seek the consent of any person willing to testify or participate in an investigation in the Requesting State, and if such person is in custody, arrange for their temporary transfer to that State; submission of documents; and any other relief consistent with the purposes of this Agreement so long as it does not conflict with the laws of the requested State[39,40].

Furthermore, several reasons for reinforcement become the background of Mutual Legal Assistance between Indonesia and Australia. These reasons

---

[39] Frento T Suharto, "The Role of Mutual Legal Assistance in Returning Assets Results of Corruption," *Jurnal Hukum Khaira Ummah* 16, no. 3 (2022): 154–168.

[40] Gledys Deyana, Matius Evan Anggara, and Lulu Yulianti, "Implementation of Indonesia's Mutual Legal Assistance Policy Regarding Asset Recovery of Corruption Crimes," in *the International Conference on Law Studies (INCOLS)*. Vol. 1. No. 1. 2020, pp. 79–93, https://conference.upnvj.ac.id/index.php/icols/article/view/1490.

include the following: in order to create foreign relations that are based on free and active politics that are aimed at national interests, which are developed through strengthening friendship and cooperation both at the bilateral and multilateral levels, to realize a new world order that is based on independence, lasting peace, and social justice.

The emergence of negative repercussions due to the growth of science and technology is the formation of crimes that no longer know the boundaries of national jurisdiction and, as a result, must be overcome and eradicated via the collaboration of countries of different nations. There is evidence of good cooperation between the Republic of Indonesia and Australia in the criminal sector. This cooperation began with an Extradition Agreement (Law Number 8 of 1994) to further strengthen cooperation between the Republic of Indonesia and Australia. Subsequently, a Mutual Assistance agreement was made in Criminal Matters simultaneously.

However, in actuality, several barriers must be overcome in order to execute mutual legal help programs successfully. According to Efi Laila Kholis, who is the Head of the Litigation and Non-Litigation Section of the Corruption Eradication Commission Law Bureau, and Dion Valerian, who is the Functional Corruption Eradication Commission Law Bureau, four hurdles frequently come up in requests for the implementation of Mutual Legal Assistance. These barriers include the following: There are disparities in the legal systems and traditions of the state that is making the request (Indonesia) and the state that is being asked for the request. The legal system can be understood as an order or complete unity relating to interconnected components or aspects. When an issue emerges, the legal system can fix it, and each component cannot function independently. The legal systems of Indonesia and Australia are fundamentally different from one another. Specifically, the legal systems of both countries need the two countries to harmonize the legislation already in place. This is to prevent the application of rules and authority from overlapping. It takes significant time to submit an application for Mutual Legal Assistance. The anti-corruption agency of the Corruption Eradication Commission in the state that is being requested is frequently willing to assist. However, the state that is being requested must first comply with legal procedures, which prevents it from taking rapid action. The country that initiated the request still needs to respond to the Corruption Eradication Commission processing of the Mutual Legal Assistance. When it comes to the implementation of Mutual Legal Assistance, one of the most common challenges or roadblocks that is met is the issue of returning assets that have been obtained by corrupt practices to the country that is applying for the

assistance. Typically, this occurs because the procedure of returning assets includes two countries, and the requested country needs to be more severe about handling it, which causes the process to appear to be drawn out. Obstacles that are associated with concerns over bank confidentiality,

In essence, when seen from the perspective of the laws that it contains, the UNCAC provides the opportunity to facilitate the repatriation of assets that have been generated from corruption caused by the concept of bank secrecy, provided that the nation in which the money is placed also ratifies the UNCAC. This is based on Article 40 of the UNCAC, which states that "each State Party shall ensure that, in the case of domestic criminal investigations of offenses established by this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws"[41,42].

There is a provision in this agreement that indicates that every State Party is obligated to ensure that its national legal system is equipped with sufficient procedures to eliminate any potential hurdles that the Bank Secrecy Act may provide to the enforcement actions against criminal offenses stated in the UNCAC.

There is no doubt that this rule concerning bank secrecy has the potential to make certain nations a destination for corrupt individuals to hide assets obtained through corrupt means since these individuals consider the nation exceedingly secure. At the same time, based on the signature of the UNCAC, the States Parties are obligated to establish mechanisms suitable for the legal systems of their respective countries to remove obstacles to the confidentiality of bank transactions[43].

Essentially, the Bank Secrecy Act (BSA) aims to bring to light the existence of money laundering and financing for terrorist organizations. Nevertheless, the Bank Secrecy Act has grown into a financial institution responsible for implementing and developing methods for monitoring customer transactions, flagging suspicious conduct, and reporting it to law enforcement officials. This

---

[41] Indira Carr and Miriam Goldby, *International Trade Law Statutes and Conventions 2013-2015*, International Trade Law Statutes and Conventions, 2013-2015 (New Rotk: Taylor & Francis, 2014).

[42] Cecily Rose, Michael Kubiciel, and Oliver Landwehr, *The United Nations Convention Against Corruption: A Commentary*, Oxford Commentaries on International Law (Oxford: OUP Oxford, 2019).

[43] Amarillys Enika Noora Ariesiyani and Lalu Garin Alham, "Money Laundering in APEC Countries: A Gravity Model Analysis of Attractiveness and Destination Choices," *AML/CFT Journal: The Journal of Anti Money Laundering and Countering the Financing of Terrorism* 1, no. 2 (2023): 146–166.

role involves the surveillance of consumer transactions. In later years, this principle was implemented in the Australia Reserve Bank Act of 1959, which granted financial institutions the authority to disclose client confidentiality information if it was utilized to disclose a case. Articles 79A and 79B of the Australian Reserve Bank Act of 1959 make this point very clear throughout the legislation.

Regarding the requirements of the Mutual Legal Assistance in Criminal Matters Agreement, one of its clauses stipulates that legal assistance may be withheld if it is demonstrated that it would damage a firm or legal entity the Australian Government owns. Applying a little radical interpretation of assets resulting from criminal acts is, of course, quite fascinating. This is especially true about the corruption proceeds deposited in the Reserve Bank of Australia. This is because a significant nominal can benefit the bank's income.

The state's political will is always in conflict with the practice of corruption when it comes to the restoration of assets that were the result of criminal conduct. The existence of authoritarian regimes that engage in corrupt practices is the root cause of this conflict. In addition, the sluggish implementation of Law No. 1 of 2006 addressing mutual legal help indicates the need for more political will and will. Seven years have elapsed since Indonesia approved the MLA agreement with Australia. Undoubtedly, the political will at issue is not coming from the Australian side but rather from the highest-ranking officials in Indonesia. Individuals responsible for putting the system into effect, drafting laws, and even enforcing it must work together to achieve harmony within the system. This harmonization has the potential to resolve disputes or reduce the likelihood of conflicts and clashes in law enforcement carried out by law enforcement officials. Additionally, it can make it easier for law enforcement officials to exercise their authority to recover assets that have been seized due to corrupt criminal conduct.

Implementation of Mutual Legal Assistance in the Return of Assets Resulting from Corruption Crimes Between Indonesia and Australia

In the instance of Hendra Rahardja, the request made by the MLA from Indonesia to Australia demonstrates the application of Mutual Legal Assistance in the return of assets that resulted from corruption offenses between Indonesia and Australia. In addition to submitting fraudulent reports to Bank Indonesia and embezzling customer deposits, Hendra Rahardja was found guilty of

corruption and received a life sentence for his actions. He was found guilty of misappropriating funds from the Bank Indonesia Liquidity Bank (BLBI) of Rp 2.659 trillion. Because of his crimes, the judge decided to give him a sentence of life in prison. The National Police had finished their investigations into the suspected banking crimes that Hendra Rahardja and his friends had committed before the Attorney General's Office took over the case of Hendra Rahardja's involvement in the corruption scandal. Hendra Rahardja, who had fled to another country, was able to be apprehended in Australia; this was made possible by the cooperation of Interpol[44].

Furthermore, the National Police have also submitted an application for extradition, and when Australia has completed the processing of the extradition request, Australia has granted the request. Despite this, Hendra Rahardja became unwell throughout his planned extradition to Indonesia. He was taken to a hospital in Sydney, Australia, for treatment until the day he passed away on January 26, 2003[45]. The duration of the extradition process was the cause of his illness. Through the assistance of Interpol, it was discovered that Hendra Rahardja possessed a significant amount of assets in Australia. The information was then supplied to the National Police by the Australian Federal Police (AFP). In connection with this, Indonesia submitted an application to Australia for Mutual Legal Assistance assistance in order to recover Hendra Raharja's assets in Australia, which were purportedly the result of crimes that were perpetrated in Indonesia[46].

An organization known as "Task Force Indonesia Australia" was established to gather various items required in the course of legal procedures in Australia. This was done in order to pursue legal action concerning Hendra Rahardja's assets. Based on information, data, documents, and admissible evidence, the Australian government, namely Australian law enforcement, the Police, and the Prosecutor's Office, processed Indonesia's request based on Australian law. When the Australian Police and Prosecutor's Office wanted to confiscate assets and block the accounts of Hendra Rahardja and his family, it

---

[44] Kenan Febrian Ganda Permana, Olga Amelia Ayu Anggreini, and Pavlo Zenaida, "International Cooperation Between Indonesia and Russia in The Eradication of Corruption (Transnational Crime)," *Jurnal Scientia Indonesia* 8, no. 2 (30, 2022): 223–250.

[45] Efendi Lod Simanjuntak, "Incoming Extradition in Indonesia and Its Implication to Human Rights," *Walisongo Law Review (Walrev)* 1, no. 2 (2020): 113–124.

[46] Rini Rumiyati, "The Extradition Agreement Between Indonesia and Australia: Case of Adrian Kiki Iriawan Extradition," *The Digest: Journal of Jurisprudence and Legisprudence* 2, no. 1 (30, 2021): 1–32.

turned out that all his assets had been sold. The sale proceeds were transferred to several countries (Singapore, Hong Kong, China, United States, and others). Therefore, Australia can only block, confiscate, and seize a small portion of Hendra Rahardja's money in a bank account. This money will then be transferred to the Indonesian government through the Ministry of Law and Human Rights.

Ultimately, it was decided that the case between Hendra Rahardja and the Central Jakarta District Court would be tried "in absentia", meaning that the defendant would not be present throughout the proceedings[47]. According to Andi Rahman Asbar, the Public Prosecutor, Hendra Rahardja was found guilty of embezzling funds from the Bank Indonesia Liquidity Bank (BLBI), which resulted in a loss of Rp 2.659 trillion for the state. He was sentenced to life in prison for his crimes. According to the allegations, Hendra Rahardja, together with his son Eko Edi Putranto, who is currently serving as the acting Commissioner of Bank Harapan Sentosa (BHS), and Sherny Kojongian, who is the Credit Director of Bank Harapan Sentosa, stole money from the state. During that period, it was not known where Eko and Sherny were located; hence, both of them were condemned to twenty years in prison. The "loan committee" was approached by Hendra Rahardja and the two convicted individuals between the years 1992 and 1996 in order to obtain help in the form of loans for BHS group businesses. There has been a continuous rise to Rp 2.659 trillion in the supply of loans that are not accompanied by an application for a letter of credit and do not require collateral to be provided.

The issue in this case was that the credit extended to the BHS Group needed to be utilized to its full potential, as in the previous arrangement. The monies were used for other purposes, such as purchasing 85 pieces of land in Bali, Makassar, Yogyakarta, and Jakarta, with an alibi utilizing the name, firm, and family of Hendra Rahardja. This was discovered after it was discovered that the funds had been used for other purposes. Subsequently, BHS encountered difficulties with its liquidity and endured losses of approximately Rp 50 billion per month due to falling credit to its group. As a result, the Bank of Indonesia (BI) offered liquidity assistance to BHS for Rp 1.578 trillion from the beginning of 1997 until October 1997, on the condition that BHS was required to compensate the aid. On the other hand, the cash and interest were recoverable on November 1, 1997, when BHS was liquidated.

---

[47] Nella Sumika Putri, "International Cooperation to Surpress Transboundary Corruption in Indonesia.," *Central European Journal of International & Security Studies* 12, no. 4 (2018): 486–498.

It was determined that the defendant could not comply with the injunction issued by BI to refrain from providing credit or payment to enterprises as part of the BHS group. In 1997, it was demonstrated that the defendant could steal cash from BHS through its group companies for Rp 305.345 billion and US $ 2.305 million. This significantly impacted the country's financial sector and caused disruptions in Indonesia's economy. In this instance, the extradition treaty between Indonesia and Australia must be more practical. This is because the Australian court stage generally necessitates a lengthy process and a significant amount of time, which ultimately leads to Hendra Rahardja's death prior to his extradition. Because it is deemed to be more practical, Mutual Legal Assistance is chosen in the practice of law enforcement across countries. This can be observed from the results of the previous sentence.

As a result of the development of this case up until this point, the case of Hendra Rahardja has become the sole case in Indonesia that has successfully obtained assets from unlawful activity in Australia. JKT. PST is based on the decision the Central Jakarta District Court handed out with the number 1032 / PID. B/2001/PN. When it comes to confiscating assets that belong to Hendra Raharja in Australia, law enforcement personnel should follow guidelines to take advantage of the Mutual Legal Assistance cooperation agreement between Indonesia and Australia. According to the terms of the agreement, Indonesia requested that Australia allow Indonesian assets to be registered in Australia. Because Indonesia is the country making the request and Australia is the party being requested, Indonesia must first determine if the assets that are the proceeds of crime are within its jurisdiction and that it must trust the existence of assets that are placed within its jurisdiction.

As a result of the existence of information, papers, and evidence that has been gathered, Australia is a nation obligated to prevent, buy, sell, divert, or destroy the proceeds of criminal activity until the Indonesian State Court issues a final ruling. Then, the final court determination was issued based on the decision of the Central Jakarta District Court Number 1032 / PID. B/2001/PN. JKT. PST, the determination contains that the requested country or Australia is obliged to carry out the determination of the Indonesian state court in the event of confiscation or seizure of these assets. To the desire made by the nation, this continues for as long as it is legal under Australian law. In order to do this, Australia carried out a formal request process from Indonesia based on Australian law to confiscate and block assets belonging to Hendra Rahardja.

In response to a request for assistance in locating and returning the assets of Hendra Rahardja that had been transferred from Australia to Hong Kong, the Australian government, through the decision of the New South Wales Supreme Court, ordered the South East Group (SEG) in Hong Kong to transfer the assets of the convicted Hendra Rahardja, which totaled USD 398,478.87, to Australia so that they could be handed over to the Indonesian government. As a follow-up to this, the government of Australia has requested that the Director of International Treaties, Directorate General of AHU, Department of Law and Human Rights, establish a dedicated account for the collection and disbursement of money totaling 398,478.87 United States Dollars. The Attorney General's Office has submitted an account to accommodate the funds to the Minister of Law and Human Rights. The account is located at Bank Rakyat Indonesia and has the number 000001933-01-000638-30-1. This account was submitted on behalf of the treasurer of the expenditures of the Attorney General of the Republic of Indonesia. Additionally, a letter dated July 27, 2006, was sent to the Attorney General of Australia at the request of the Minister of Law and Human Rights.

The latest development in the handling of assets of convict Hendra Rahardja is that on December 8, 2009, a symbolic handover of assets at the Department of Law and Human Rights was carried out by the Australian authorities to the Integrated Team and the Department of Law and Human Rights as the Central Authority, funds amounting to 493,647.07 Australian Dollars which will be transferred to Account Number: 000001933-01-000638-30-1 on behalf of the treasurer of expenditure of the Attorney General of the Republic of Indonesia.

The Experience of Mutual Legal Assistance Frameworks in Singapore and the United Kingdom

This section analyzes two jurisdictions, Singapore and the United Kingdom, with an emphasis on their legal frameworks pertaining to mutual legal assistance (MLA) and asset confiscation. The ASEAN Mutual Legal Assistance Treaty (MLAT) was executed on November 29, 2004, by eight member states of ASEAN, with Myanmar and Thailand subsequently acceding in January 2006. From 2004 to 2013, all ten ASEAN member states ratified the treaty. In April 2005, Singapore became the first country to ratify the treaty, subsequently integrating it into its domestic legal framework via the Mutual Assistance in Criminal Matters Act (MACMA), which was enacted on April 1,

2000. The MACMA consists of four distinct sections: Preliminary, Requests by Singapore, Requests to Singapore, and Miscellaneous Provisions. Part I delineates the objectives, range, and terminology of the act. Part II outlines the procedures by which Singapore seeks assistance from other jurisdictions. This includes the acquisition of evidence, coordination for witness attendance, enforcement of confiscation orders, identification of individuals, and the execution of legal processes. Part III outlines the mechanisms through which foreign states may seek Singapore's assistance in analogous situations, whereas Part IV focuses on the procedural regulations and provisions related to the courts. [48]

While instances of MACMA-related cases in Singapore have been infrequent, the implementation of mutual legal assistance mechanisms has enabled significant operations. In 2004, Singapore engaged in a collaboration with the Royal Malaysian Police aimed at dismantling a human smuggling syndicate. This effort led to the extradition and subsequent conviction of the syndicate leader along with accomplices. In 2005, Singapore engaged in an FBI-led international operation aimed at the "*Fairlight*" internet piracy syndicate, resulting in the arrest of four individuals and the seizure of software worth SG$ 10,000. This operation established Singapore as the inaugural nation to achieve convictions against members of the syndicate.

The Crime governs the United Kingdom's MLA framework (International Co-operation) Act (CICA) 2003, which delineates the mechanisms for processing MLA requests. CICA focuses on fundamental institutional elements, whereas specific agreements or other legislation, like the Proceeds of Crime Act (POCA) 2002, dictate the detailed procedures, including formats, timeframes, and grounds for refusal. The UK comprises three central authorities: the UK Central Authority (UKCA), operating under the Home Office, which is accountable for England, Wales, and Northern Ireland; Her Majesty's Revenue and Customs (HMRC), which handles fiscal responsibilities; and the Crown Office in Scotland, which manages requests pertaining to devolved areas. The authorities handle both incoming and outgoing requests, evaluate the basis for refusal, and direct cases to appropriate entities like the Crown Prosecution Service (CPS) or the National Crime Agency (NCA) [49].

---

[48] George Baylon Radics, "Singapore's Mutual Assistance in Criminal Matters Act (Chapter 190a) and Its Application to Thailand," *Thammasat Law Journal* 43 (2017): 444–55.

[49] Julinda Beqiraj and Richard Mackenzie-Gray Scott, *Mutual Legal Assistance (MLA) in Criminal Matters in the UK and in Developing Countries: A Scoping Study* (Bingham Centre for the Rule of Law, British Institute of International and Comparative Law, 2022),

The framework in the UK facilitates asset confiscation via multiple treaties, such as the United Nations Convention Against Corruption (UNCAC) and various bilateral agreements. Without treaties in place, the UK utilizes asset-sharing agreements or implements domestic laws to oversee the management of confiscated assets. Non-conviction-based confiscation entails the identification of "recoverable property," which signifies assets obtained from illegal activities that are deemed criminal in both the original jurisdiction and in the UK. Non-conviction-based confiscation requests are directed to the UKCA, where civil courts issue recovery orders that facilitate the transfer of property to a trustee appointed by the court.

Recent legislative developments in the UK have expanded the scope of non-conviction-based confiscation, enabling authorities to freeze and forfeit bank accounts, as well as seize assets, including precious metals and artworks. The implementation of these measures increases the adaptability in the enforcement of confiscation orders, allowing courts to exercise discretion in denying recovery when the property holder can prove good faith acquisition.

Legal Challenges in Implementing Mutual Legal Assistance between Indonesia and Australia for Asset Recovery in Corruption Cases

Arifin et al.[50] discuss the challenges associated with implementing mutual legal assistance, noting that variations in legal systems among countries can influence their ability to engage with mutual legal assistance requests effectively. Countries that implement stringent privacy laws or prioritize human rights may encounter legal obstacles that hinder their ability to share specific types of evidence or obtain compelling testimony from their citizens. Furthermore, nations might decline to engage in cooperation in specific instances if they perceive that such actions could infringe upon their sovereignty or legal frameworks, particularly in situations related to the death penalty or political crimes.

---

https://binghamcentre.biicl.org/publications/mutual-legal-assistance-mla-in-criminal-matters-in-the-uk-and-in-developing-countries-a-scoping-study.

[50] Ridwan Arifin et al., "The Direction of Indonesia's Legal Policy on the ASEAN Mutual Legal Assistance Treaty in Criminal Matters: A Path to Law Reform in Cross-Border Crime Enforcement in Southeast Asia," *Journal of Law and Legal Reform* 5, no. 2 (2024): 749–782.

The Indonesia Corruption Eradication Commission's analysis of its interactions with various developed nations regarding mutual legal assistance reveals that no particular provisions have been identified that could present notable obstacles for developing countries in executing mutual legal assistance agreements. Many countries incorporate asset-sharing provisions in the process of recovering assets obtained through criminal activities. As a result, Indonesia needs to strategically prepare to tackle this issue, which involves adjusting pertinent legislation and engaging in negotiations with the involved countries.

Challenges such as time constraints and necessary protocols in the execution of mutual legal assistance agreements, especially in relation to asset recovery and the proceeds of corruption, can create significant barriers. It is preferable to avoid imposing rigid regulations regarding timeframes or costs associated with the asset recovery process, given its inherent complexity. The initiation of asset recovery typically involves the systematic tracing or locating of assets. In certain nations, acquiring data concerning asset ownership is achievable without the need for mutual legal assistance and can be streamlined via direct information exchange between agencies.

This study reveals multiple challenges in the implementation of mutual legal assistance between Indonesia and Australia, with the principal barrier identified as the disparity in legal systems. Indonesia functions within a civil law framework, whereas Australia follows a common law structure, leading to considerable difficulties in aligning legal processes, terminology, and interpretations. Irma Reisalinda Ayuningsih and Febby Mutiara Nelson[51] identify a significant distinction in the mechanisms employed for asset forfeiture. In Indonesia, asset forfeiture occurs through criminal proceedings or in personam, which entail actions directed at individuals. The procedure necessitates a criminal trial and a conviction that establishes the defendant's guilt prior to the seizure of assets, as it links asset forfeiture to criminal penalties. The prosecution is required to demonstrate that the assets involved are either derived from criminal activity or utilized as instruments in the commission of a crime, using the "taint doctrine" to substantiate this link. This mechanism exhibits limitations, as asset seizure is contingent upon the offender's proven guilt in a court of law. Various factors can impede the execution of forfeiture. These include the death of the defendant, immunity from prosecution, the considerable influence of the offender hindering legal proceedings, the

[51] Irma Reisalinda Ayuningsih and Febby Mutiara Nelson, "Perampasan Aset Tanpa Pemidanaan: Suatu Perbandingan Indonesia Dan Australia," *Jurnal Ius Constituendum* 7, no. 2 (2022): 246–261.

offender's flight from the country, or the transfer of assets to a third party that remains unprosecuted.

Australia utilizes a non-conviction-based asset forfeiture mechanism, known as in rem, which facilitates the recovery of assets associated with criminal activity independent of a criminal conviction. This method considers the assets as the focal point of the action. The Federal Government of Australia implemented this mechanism in 1977 through an amendment to section 229A of the Customs Act 1901, which allows for the confiscation of cash, checks, or goods without the necessity of criminal charges or convictions. The Commonwealth level saw further reinforcement of this approach through the Proceeds of Crime Act 2002 (POCA), which establishes a framework for tracing, restraining, and confiscating assets that are sufficiently connected to criminal activity under Commonwealth laws. Between 1985 and 1993, all Australian states and territories implemented conviction-based confiscation mechanisms. However, jurisdictions like Western Australia and the Northern Territory took additional steps by permitting their Directors of Public Prosecutions to seek forfeiture orders in cases of "unexplained wealth." This approach shifted the onus onto individuals to prove that their wealth was obtained through lawful means.

In a world that is becoming more interconnected and digital, corrupt individuals take advantage of vulnerabilities in national and regional oversight and regulations, along with deficiencies in the global financial system, to misappropriate public resources, launder money, and hide illicit gains. Kleptocrats frequently exploit public contracts, concessions, and procurement processes to enrich themselves. At the same time, corrupt political and economic elites gain from the illegal trade of high-value commodities like gold, wildlife, and natural resources. The challenges are intensified by inadequate regulatory and legal frameworks, insufficient transparency in business and financial operations, ineffective governance, and restricted capacity for financial oversight.

Furthermore, a lack of independence and accountability in monitoring, along with weakened judicial and law enforcement sectors, increases the vulnerability of states to exploitation. In light of the current situation, it is essential to reevaluate and enhance the mutual legal assistance framework between Indonesia and Australia, especially regarding the recovery of assets linked to corruption. This collaboration should be based on transnational governance networks that tackle the intricacies of cross-border corruption. These networks exert influence via three main approaches: cognitive, prescriptive, and technical. The cognitive approach emphasizes the collection

and synthesis of information alongside the distribution of policies via mechanisms referred to as policy transfer. The prescriptive approach seeks to create rules or standards, utilizing norm entrepreneurs who synchronize interests to accomplish common goals. In the interim, the technical approach encompasses the provision and exchange of assistance, primarily within the framework of law enforcement collaboration. Implementing a systematic and network-oriented framework is anticipated to improve collaboration between Indonesia and Australia, thereby establishing a more efficient mechanism for addressing transnational corruption.

Conclusion

Establishing a Mutual Legal Assistance collaboration between Indonesia and Australia results from several factors that encourage the cooperation. To begin, to enhance the level of practical cooperation between Indonesia and Australia in the context of the execution of judicial principles and the enforcement of laws. Second, establish international relations founded on free and active politics. It is required to overcome and eradicate it through cooperation between Indonesia and Australia because the growth of science and technology has a negative influence, specifically the creation of criminal activities that no longer know the boundaries of a country's jurisdiction. Third, it is necessary to conquer and eradicate it because of the significance of this issue. A Mutual Assistance Agreement in Criminal Matters was signed between Indonesia and Australia to promote further cooperation between the two countries. This was done in order to enhance cooperation between the two nations further.

The case of Hendra Rahardja is an excellent example of how the application of Mutual Legal Assistance can be put into practice in the process of returning assets that have been stolen as a result of corruption between Indonesia and Australia. In the history of Indonesia, this particular case is the only one that has successfully obtained assets from criminals in Australia. According to the terms of the agreement, Indonesia requested that Australia allow Indonesian assets to be registered in Australia. Because Indonesia is a country making a request, it is necessary for Indonesia first to determine whether or not the assets that are the profit of criminal activity fall under its jurisdiction. On the other hand, several challenges remain to overcome when returning assets seized due to corruption. As a consequence, the process of

restoring these assets is drawn out and frequently results in issues for the nation that is being referred to.

Therefore, by Law Number 1 of 1999, respecting the Ratification of the Agreement Between the Republic of Indonesia and Australia concerning Mutual Legal Assistance in Criminal Matters, the collaboration between Indonesia and Australia in Mutual Legal Assistance must be carried out. The reason for this is to ensure that corrupt individuals who flee to the country in question can be swiftly tried by the law that is in effect—additionally, maximizing efforts to restore state assets that are located in other countries by pressing the government to immediately engage into Mutual Legal Assistance Agreements with other nations that are suspected of being sites where assets that are the product of corruption are stored.

This study emphasizes the significant role of mutual legal assistance in promoting international cooperation for asset recovery, alongside the challenges that hinder its effective implementation. However, various aspects warrant additional investigation to enhance the overall efficacy of mutual legal assistance. A potential direction for future research involves performing a comparative analysis of mutual legal assistance practices among various countries. An investigation of this nature could reveal innovative strategies and effective practices that Indonesia could implement to enhance its asset recovery processes and reduce jurisdictional conflicts. This would improve efficiency and foster consistency in the implementation of mutual legal assistance agreements.

A key focus of the research pertains to enhancing Indonesia's internal legal structure to facilitate the effective implementation of mutual legal assistance. It is crucial to pinpoint the existing gaps or ambiguities in current legislation that hinder effective collaboration. Future research could yield practical recommendations through the proposal of targeted amendments or the drafting of new legal provisions aimed at improving the alignment of domestic laws with international mutual legal assistance standards, thereby facilitating seamless cooperation with global counterparts.

References

Ariesiyani, Amarillys Enika Noora, and Lalu Garin Alham. "Money Laundering in APEC Countries: A Gravity Model Analysis of Attractiveness and Destination Choices." *AML/CFT Journal: The Journal of Anti Money Laundering and Countering the Financing of Terrorism* 1, no. 2 (June 25, 2023): 146–166.

Arifin, Ridwan, Rodiyah Rodiyah, Waspiah Waspiah, Asyaffa Ridzqi Amandha, Elizabeth Yunita Krisnawati, Tirta Sandi, and Michael Timothy Napitupulu. "The Direction of Indonesia's Legal Policy on the ASEAN Mutual Legal Assistance Treaty in Criminal Matters: A Path to Law Reform in Cross-Border Crime Enforcement in Southeast Asia." *Journal of Law and Legal Reform* 5, no. 2 (2024): 749–782.

Arifin, Ridwan, Sigit Riyanto, and Akbar Kurnia Putra. "Collaborative Efforts in ASEAN for Global Asset Recovery Frameworks to Combat Corruption in the Digital Era." *Legality : Jurnal Ilmiah Hukum* 31, no. 2 (October 13, 2023): 329–343.

Arifin, Ridwan, et al. "A Discourse of Justice and Legal Certainty in Stolen Assets Recovery in Indonesia: Analysis of Radbruch's Formula and Friedman's Theory." *Volksgeist: Jurnal Ilmu Hukurn dan Konstitusi* 6, no. 2 (2023): 159-181.

Ayuningsih, Irma Reisalinda, and Febby Mutiara Nelson. "Perampasan Aset Tanpa Pemidanaan: Suatu Perbandingan Indonesia Dan Australia." *Jurnal Ius Constituendum* 7, no. 2 (2022): 246–261.

Bahoo, Salman, Ilan Alon, and Andrea Paltrinieri. "Corruption in International Business: A Review and Research Agenda." *International Business Review* 29, no. 4 (August 1, 2020): 101660.

Beqiraj, Julinda, and Richard Mackenzie-Gray Scott. *Mutual Legal Assistance (MLA) in Criminal Matters in the UK and in Developing Countries: A Scoping Study*. Bingham Centre for the Rule of Law, British Institute of International and Comparative Law, 2022. https://binghamcentre.biicl.org/publications/mutual-legal-assistance-mla-in-criminal-matters-in-the-uk-and-in-developing-countries-a-scoping-study.

Carr, Indira, and Miriam Goldby. *International Trade Law Statutes and Conventions 2013-2015*. International Trade Law Statutes and Conventions, 2013-2015. (New York: Taylor & Francis, 2014O.

Cooley, Alexander, and J. C. Sharman. "Transnational Corruption and the Globalized Individual." *Perspectives on Politics* 15, no. 3 (2017): 732–53.

Deyana, Gledys, Matius Evan Anggara, and Lulu Yulianti. "Implementation of Indonesia's Mutual Legal Assistance Policy Regarding Asset Recovery of Corruption Crimes." *4*. https://conference.upnvj.ac.id/index.php/icols/article/view/1490.

Gennaro, Giacomo Di, and Roberta Aurilia. "Corruption and Policy-Making: How Corruption Models Favor Mafias – The Case Study of Italy." In *Corruption*, edited by Josiane Fahed-Sreih, Ch. 9. (Rijeka: IntechOpen,

2022).

Gilmore, William C. *Mutual Assistance in Criminal and Business Regulatory Matters*. A Grotius Publication. Cambridge University Press, 1995.

Ginting, Jamin. "Roles of the Mutual Legal Assistances and Extradition Agreements in the Assets Recovery in Indonesia." *Indonesian Journal of International Law* 9, no. 4 (2011): 565–852.

Goel, Rajeev K., and James W. Saunoris. "Corrupt Thy Neighbor? New Evidence of Corruption Contagion from Bordering Nations." *Journal of Policy Modeling* 44, no. 3 (May 1, 2022): 635–652.

Joutsen, Matti. "International Cooperation against Transnational Organized Crime: The Practical Experience of the European Union." *Resource Material Series*, no. 59 (2002): 394–428.

Karnaukhova, Oxana, Alexandra Udovikina, and Bryan Christiansen. *Economic and Geopolitical Perspectives of the Commonwealth of Independent States and Eurasia*. (Hershey, PA: IGI Global, 2018).

Kuru, Damla. "Perspective Chapter: From Ancient Times to Modern World – Corruptus." In *Corruption*, edited by Josiane Fahed-Sreih, Ch. 13. (Rijeka: IntechOpen, 2022).

Lasmadi, Sahuri, Elly Sudarti, and Nys Arfa. "Asset Seizure of Money Laundering Crimes Arising from Corruption in the Perspective of Legal Certainty and Justice." *Pandecta Research Law Journal* 18, no. 2 (2023): 352–74.

Maringka, Jan Samuel. "Extradition In Criminal Justice System Related To Foreign Jurisdiction." *Pattimura Law Journal* 1, no. 2 (2017): 79–97.

Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Prenada Media, 2017.

Maskun, Maskun. "Combating Corruption Based on International Rules." *Indonesia Law Review* 4, no. 1 (January 1, 2014): 55–66.

Mendy, Ousu. "The State and Prospect of Legislation Number 39 Year 1999 of Indonesia." *International Journal of Humanities, Management and Social Science (IJ-HuMaSS)* 6, no. 1 (June 24, 2023): 13–22.

Mohas, Muhyi Mohas, Belardo Prasetya Mega Jaya, Mohamad Fasyehhudin, and Arizon Mega Jaya. "The Indonesia Government's Strategy in Arrest and Confiscation of Criminal Corruption (Corruptor) Assets Abroad." *Jurnal Dinamika Hukum* 21, no. 3 (March 28, 2022): 432–445.

Nashrullah, Jauhar. "Interpretation of the Position of the Corruption Eradication Commission as an Executive Agency." *Kanun Jurnal Ilmu Hukum* 25, no. 1 (2023): 53–77.

Nay, Olivier. "How Do Policy Ideas Spread among International Administrations? Policy Entrepreneurs and Bureaucratic Influence in the

UN Response to AIDS." *Journal of Public Policy* 32, no. 1 (2012): 53–76.

Obokata, Tom, and Brian Payne. *Transnational Organised Crime: A Comparative Analysis*. Routledge Research in Transnational Crime and Criminal Law. (Abingdon, UK: Taylor & Francis, 2016).

Olásolo, Héctor. *International Criminal Law, Transnational Criminal Organizations and Transitional Justice* (New York: Brill, 2018).

Permana, Kenan Febrian Ganda, Olga Amelia Ayu Anggreini, and Pavlo Zenaida. "International Cooperation Between Indonesia and Russia in The Eradication of Corruption (Transnational Crime)." *Jurnal Scientia Indonesia* 8, no. 2 (October 30, 2022): 223–250.

Prakasa, Satria Unggul Wicaksana, Basuki Babussalam, and Agus Supriyo. "Transnational Corruption and Its Impact on Indonesian Jurisdiction:" In *Proceedings of the 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020)*. Purwokerto, Indonesia: Atlantis Press, 2020.

Prawira, Muhammad Yudha, and Fatra Alamsyah. "The Implementation of Mutual Legal Assistance between Indonesia and Switzerland Regarding Asset Recovery." *Indonesian Comparative Law Review* 5, no. 2 (May 19, 2023): 58–74.

Putri, Nella Sumika. "International Cooperation to Surpress Transboundary Corruption in Indonesia." *Central European Journal of International & Security Studies* 12, no. 4 (2018): 486–498.

Radics, George Baylon. "Singapore's Mutual Assistance in Criminal Matters Act (Chapter 190a) and Its Application to Thailand." *Thammasat Law Journal* 43 (2017): 444–455.

Ramli, Asmarani, et al. "The Importance of Non-Conviction Based (NCB) Regulations for Asset Confiscation in Illegal Investment." *Journal of Law and Legal Reform* 5, no. 1 (2024): 1-26.

Rasyid, Sulaiman, and Joko Setiyono. "Extradition Arrangements in Efforts to Eradicate Corruption Crimes in Indonesia." *Jurnal Dinamika Hukum* 21, no. 2 (March 30, 2022): 301–310.

Rose, Cecily. "The Limitations of the United Nations Convention against Corruption." In *International Anti-Corruption Norms: Their Creation and Influence on Domestic Legal Systems*, edited by Cecily Rose, (Oxford: Oxford University Press, 2015).

Rose, Cecily, Michael Kubiciel, and Oliver Landwehr. *The United Nations Convention Against Corruption: A Commentary*. Oxford Commentaries on International Law. (Oxford: OUP Oxford, 2019.

Rumiyati, Rini. "The Extradition Agreement Between Indonesia and Australia:

Case of Adrian Kiki Iriawan Extradition." *The Digest: Journal of Jurisprudence and Legisprudence* 2, no. 1 (June 30, 2021): 1–32.

Silalahi, Ranto Sabungan. "Corruption in Match-Fixing Within Sports: The Need to Regulate Future Legislation (A Comparative Study and Lesson from the Australian System of Law)." *Indonesia Law Review* 10, no. 1 (April 30, 2020): 45–58.

Simanjuntak, Efendi Lod. "Incoming Extradition in Indonesia and Its Implication to Human Rights." *Walisongo Law Review (Walrev)* 1, no. 2 (2020): 113–24.

Sinaga, Anna Christina, Jacob Phelps, Dadang Trisasongko, and Muji Kartika Rahayu. *Mutual Legal Assistance to Strengthen Indonesia-ASEAN Forest Governance*. Vol. 77. CIFOR, 2014. https://www.cifor.org/knowledge/publication/5050/.

Sobari, Ahmad. "Mla in Criminal Matters as Asset Recovery's Tool." *Mimbar Hukum* 26, no. 2 (November 11, 2014): 297–307.

Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: Universitas Indonesia, 1989.

StAR. "International Cooperation: Engagement with Foreign Jurisdictions for Asset Recovery." Stolen Asset Recovery Initiative (StAR), 2024. https://star.worldbank.org/focus-area/international-cooperation.

Suharto, Frento T. "The Role of Mutual Legal Assistance in Returning Assets Results of Corruption." *Jurnal Hukum Khaira Ummah* 16, no. 3 (2022): 154–68.

Suharto, Miko Aditiya, and Maria Novita Apriyani. "The Urgency of Mutual Legal Assitance in Criminal Matters (MLA) in Action Against of Corruption." *Nusantara Science and Technology Proceedings*, 2023, 531–37.

Sunaryo, Sidik, and Asrul Ibrahim Nur. "Legal Policy of Anti-Corruption Supervisor Design: A New Anti-Corruption Model in Indonesia." *Bestuur* 10, no. 2 (December 15, 2022): 137–58.

Suramin. "Indonesian Anti-Corruption Law Enforcement: Current Problems and Challenges." *Journal of Law and Legal Reform* 2, no. 2 (April 30, 2021): 225–42.

Syifa, Zakia. "Open Government Partnership: Indonesian Transformative Effort to Deal with Corruption." *Jurnal Hubungan Internasional* 10, no. 1 (September 28, 2017): 77–89.

Tongalaza, Saida. "The Need for International Cooperation in Criminal Matters: Case of Madagascar." *Arena Hukum* 8, no. 1 (April 1, 2015): 35–53.

Vũ, Hải Anh. "Practices of Mutual Legal Assistance in Criminal Matters between Vietnam and Southeast Asia Countries." *International Journal of Criminal Justice Sciences* 18, no. 1 (2023): 64–78.

Wagner, Benjamin B, and Leslie Gielow Jacobs. "Retooling Law Enforcement to Investigate and Prosecute Entrenched Corruption: Key Criminal Procedure Reforms for Indonesia and Other Nations." *University of Pennsylvania Journal of International Law* 30, no. 1 (2008): 183–265.

Yuliana, and Mujiono Prasetyo. "Criminal Accountability of State Officials Committing Political Corruption in Indonesia." *Arena Hukum* 15, no. 1 (April 28, 2022): 160–75.

Zulkarnain, Muhammad Haris. "Pembentukan Lembaga Peradilan Khusus Pemilihan Umum Dalam Rangka Mewujudkan Electoral Justice System." *Progressive Law and Society* 1, no. 1 (October 31, 2023): 27–41.

***

Acknowledgment
None

Funding Information
None

Conflicting Interest Statement
The authors state that there is no conflict of interest in the publication of this article.

History of Article
Submitted : January 26, 2024
Revised : April 25, 2024; September 9, 2024; November 1, 2024
Accepted : November 20, 2024
Published : November 30, 2024