



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

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Abstract

The development of corruption crimes today is increasing from year to year and is accompanied by other crimes such as hiding assets resulting from corruption in other countries. One of the efforts to take assets resulting from corruption in other countries can be taken with Mutual Legal Assistance to eradicate various crimes with a transnational dimension, especially in corruption. Regulations related to MLA have been promulgated in Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters. Mutual Legal Assistance is considered as the initial stage of law enforcement, especially in the recovery of state assets resulting from Corruption Crimes, so cooperation with other countries is needed such as between Indonesia and Australia which aims to return state assets resulting from corruption crimes hidden in Australia.

Keywords: *Mutual Legal Assistance; Return of Assets; Criminal Acts of Corruption*

A. Introduction

Corruption comes from the Latin word "*corruption or corruptos*". *Corruption* comes from the word *corrumpere*. Indonesia uses the word corruption which is a derivative of the Dutch language which starts from the word "*corruption*" which is now "*corruption*".¹ The true meaning of corruption refers to dishonest, rotten, corrupt actions related to finance.² The criminal act of corruption is defined as a major problem faced by Indonesia and becomes a national problem. Corruption is considered a serious problem "*seriousness crime*", because its development is growing from year to year both in Indonesia and in the world and on a large scale so that it must require *handling "extra ordinary treatment"*. It is not uncommon to find cases that drag two countries in terms of corruption such as state assets resulting from

¹ Ruslan Renggong, 2017, *Special Criminal Law, quoted from Eradicating Corruption Through National and International Criminal Law: Andi Hamzah*, Pranada Media: Jakarta, page 60.

²Chaerudin, Syaiful Ahmad Dinar and SyarifFadillah, 1992, *Strategy for Prevention & Law Enforcement of Criminal Acts of Corruption*, RefikaAditama, Bandung, page 2.

corruption that are hidden or rushed and transferred abroad, usually these assets are rushed to the financial centers of developed countries that have legal system protection.³ This situation shows the motivation of perpetrators of corruption crimes who carry out their actions based on technological and communication developments so that they can easily flee their state assets to other countries. This cooperation shows that there are transnational elements carried out to escape or hide the results of the criminal act of corruption, this is because the act has involved two countries and has crossed the territorial boundaries of a country.⁴

International cooperation is effectively felt to be held with respect to national and transnational crime problems. Bilateral and multilateral cooperation relations as a form of effort in overcoming these problems are considered to be necessary because it is not enough if the effort is only carried out by one country. One form of international cooperation that functions as law enforcement to exchange information is criminal mutual assistance. Therefore, in 2006 Indonesia passed Law of the Republic of Indonesia Number 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters or the so-called MLA Law with the aim of providing a legal basis related to cooperation between Indonesia and other countries in submitting and/or receiving requests for assistance from foreign countries.⁵ *Mutual Legal Assistance* or mutual assistance arises as an effort to handle and eradicate various crimes with a transnational dimension, especially in the criminal act of corruption.⁶

According to UNCAC 2003, in addition to the extradition treaty *Mutual Legal Assistance in Criminal Matters* is also a form of international cooperation whose implementation aims to impoverish corruptors, therefore it is very important to have Mutual Legal Assistance Agreements with countries that dijadikan tempat penyimpanan asset oleh para koruptor. Beberapa negara tersebut diantaranya adalah Australia, Singapura, Swiss, dan Hong Kong (RRT) serta sudah memiliki Perjanjian Bantuan Timbal Balik dengan Indonesia.⁷ Cooperation between Indonesia and other countries through mutual assistance in criminal matters with the aim of preventing and eradicating corruption is appropriate and useful. The implementation of international cooperation between Indonesia and other countries in terms of providing mutual assistance also aims to expedite the process of investigation, investigation, prosecution and examination in court hearings as well as to eradicate and reduce crimes committed in an organized manner.⁸

Various efforts to eradicate corruption in Indonesia are increasingly intensive, because there is an essence of the Law on corruption in Indonesia, namely Law No. 31 of 1999 Jo. Law No. 20 of 2000 aims to restore state finances and / or state wealth, in addition to imposing penalties on perpetrators to have a *psychologisedwang* impact or psychic coercion to society. The return of assets by perpetrators of corruption crimes is expected to restore state finances or the state economy which ultimately leads to public welfare.⁹ Cooperation with other countries such as reciprocal assistance is also one of the efforts made by the Indonesian government in eradicating corruption in the country. It also aims to return state

³JaminGinting, 2011, *International Agreement on the Return of Corrupt Assets in Indonesia*, Journal of Legal Dynamics Vol. 11 No. 3, page 450.

⁴ Rahmat Abdullah, *Asset Forfeiture of Corruption Proceeds Through Mutual Legal Assistance*, accessed from [https://www.academia.edu/27502214/Perampasan Aset Hasil Tindak Pidana Korupsi Melalui Mutual Legal Assistance](https://www.academia.edu/27502214/Perampasan_Aset_Hasil_Tindak_Pidana_Korupsi_Melalui_Mutual_Legal_Assistance), on January 28, 2022.

⁵AlliyaYusticiaPramudya, 2021, *Examining the Potential of Mutual Legal Assistance in Law Enforcement in Indonesia*, Journal of Procedural Law Vol 9 No.3, page 543.

⁶RomliAtmasasmita, 1997, *Transnational Narcotics Crime in the Indonesian Criminal Law System*, Citra Aditiya, Bandung, page. 77.

⁷ Ricardo Santos dan HeryFirmansyah, *Prosedur Pelaksanaan Mutual Legal Assistance Terhadap Pemulihan Aset Hasil Korupsi Yang Dilarikan Ke Luar Negeri*. Jurnal Hukum Lex Generalis. Vol.2. No.1 (Januari 2021), halaman 42.

⁸Arga A. Sarayar, *Legal Studies of Mutual Legal Assistance in the Settlement of International Crimes*. Lex Et Societatis Vol. VII/No. 11/Nov/2019, page 64.

⁹SentenceulJumroh and Ade Kosasih, *Return of Assets from Perpetrators of Corruption Crimes*. Bengkulu : Zigie Utama, 2015) pages 79-80.

assets resulting from corruption crimes hidden in other countries. By conducting *mutual legal assistance*, it is hoped that it can restore state financial losses arising from these criminal acts.

B. Research Methods

This legal research includes normative legal research that is prescriptive using primary and secondary sources of legal materials. The technique used in collecting legal materials in this study is by literature study. According to SoerjonoSoekanto and Sri Mamudji, normative legal research is also called "Literature Research". 10 Legal material analysis techniques use qualitative method analysis techniques supported by deductive thinking logic.

C. Results of Research and Discussion

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

The rise of corruption cases in Indonesia 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, raises a way to deal with this problem, through the establishment of cooperation between countries aimed at facilitating the return of assets resulting from corruption crimes and handling the process of investigation, prosecution, and hearing in court on a matter arising in both the Requesting State and the Requested State. The problem faced in cooperation in the field of law and criminal justice is related to jurisdiction over people who are in the process of applying criminal law starting from the stage of investigation, investigation, judicial process to the implementation of punishment for crimes committed by someone related to the jurisdiction of other countries. In the event that the return of assets resulting from criminal acts is certainly mandatory through a mechanism, if the return of assets through formal channels, a Mutual Assistance Agreement in Criminal Matters is required. Therefore, Mutual Legal Assistance is considered one of the most effective forms of cooperation in returning assets resulting from the criminal act of corruption.¹¹

Mutual Legal Assistance exists as a way to overcome and eradicate various transnational crimes, considering that crime has a very large influence in a country. Mutual legal assistance is strongly encouraged in several international meetings and UN Conventions, such as the *United Nations Convention Against Corruption* (UNCAC). Signatory countries are advised to have international cooperation in the form of MLA with the aim of eradicating corruption. Mutual Legal Assistance is a form of agreement formed between countries as an effort to eradicate various transnational organized crime. The background to the creation of the MLA Law is to assist law enforcement in Indonesia in pursuing assets from suspects who are abroad and to tackle transnational crime which tends to increase.¹² Cooperation between countries in the form of MLA aims to facilitate asset recovery by victim countries, facilitate asset return, and eliminate safe places for corruptors to hide these assets.

Formally, to be able to enter into Cooperation between countries in the form of MLA must be through a request for Mutual Legal Assistance either Indonesia as a Requesting State or as a Requested State which is carried out facilitated and coordinated by the Central Authority appointed by law which can be done through diplomatic channels or directly. Although law enforcement agencies can communicate informally and directly, formal requests for mutual assistance must still go through the

¹⁰SoerjonoSoekanto and Sri Mamudji, *Normative Law Research*, Rajawali Pers, Jakarta pages 13-14.

¹¹ Bphn.go.id, accessed from https://www.bphn.go.id/data/documents/bantuan_timbal_balik_dlm_masalah_pidana.pdf.

¹² Irma Sukardi, Loc.cit, pages 19-21.

Central Authority. Especially to ensure the legitimacy of the mutual assistance implemented. In the process, the Central Authority will evaluate, verify, and communicate with relevant parties, both domestic applicant agencies, and with central authorities of other countries to ensure that assistance is carried out in accordance with applicable laws and regulations.¹³

a. Procedure for Requesting Assistance by Indonesia to Foreign Countries

The procedure to be passed is as follows:

- 1) The Chief of National Police or the Attorney General or the Corruption Eradication Commission submits an application to the Minister of Law and Human Rights as the Central *Authority*.
- 2) The content of the request contains the identity of the requesting institution/institution, the subject matter and nature related to the request, the court decision, the name and function of the institution conducting the investigation, prosecution and judicial process, summary of the facts, relevant legal provisions, the contents of the Article and its criminal threats, the specific procedure regarding assistance and the purpose of the requested assistance including confidentiality, and if there are other conditions specifically determined by the State that Asked.
- 3) Requests for assistance are submitted by the Minister of Law and Human Rights either directly or through diplomatic channels. If you take diplomatic channels, the Minister of Law and Human Rights cooperates with the Ministry of Foreign Affairs. Problems regarding diplomatic channels usually arise because the destination country requires it.
- 4) If there is a response from the requested State, it will be through the central authority or the Ministry of Foreign Affairs. In general, there are always improvements or completeness of requirements that must be completed by Indonesia. To this response, the central authority or the Ministry of Foreign Affairs will proceed to the relevant agencies.

The procedure for asset seizure is only listed in Article 22 and Article 23 of the Mutual Legal Assistance Law, so the mechanism of seizure is as follows:

- 1) There is a Court Decision that has permanent legal force which in one of its cases orders the confiscation of confiscated goods to be handed over to the State.
- 2) Based on the Judgment, the Attorney General shall submit an application to the Minister as the central authority and submit an application for assistance to the Requested State to follow up on the decision of the relevant court in the Requested State. This provision does not refer to the authority of the Corruption Eradication Commission (KPK) to request assistance in following up on Court Decisions. However, looking at the provisions of Article 9 of the MLA Law, it has been explained that in the case of criminal acts of corruption, requests for assistance to the Minister, the Chairman of the Corruption Eradication Commission (KPK) can also submit it, not only the Chief of Police and the Attorney General.
- 3) Then related to the implementation of the Decision actually depends on the legal order of the Requested State and the conditions that must be met. All correspondence will then be transmitted and distributed by the Minister of Law and Human Rights as the Central Authority.

b. Procedure in Request for Assistance by Foreign Countries to Indonesia

With respect to requests for legal assistance to the Government of Indonesia, the basic principle of mutual assistance requests remains that they can be made through diplomatic or direct channels. For

¹³ Andi Eva Nurliani and Dahlan Pasaribu, *Mutual Legal Assistance in Criminal Matters (MLA): Cross-border Law Enforcement Cooperation Mechanism*. (Depok : BPSDM KUMHAM Press, 2020) page. 23.

requests for assistance to the Indonesian government, the provisions imposed by Indonesia under Article 28 of the MLA Law apply, namely:

- 1) The contents of the request for assistance include the purpose of the request for assistance, as well as a description of the request for assistance, the agency and the name of the official conducting the investigation, prosecution or examination at the court hearing related to the request, description of the criminal act, level of resolution of the case, statutory provisions, the contents of the Article including also the threat of punishment, description related to acts whose circumstances are suspected as criminal acts, except in the case of requests for assistance to carry out submission of letters, decisions of the court concerned and explanations that the decision has permanent legal force. In the event that a request for assistance is made to follow up on a court decision; details of procedures or special conditions to be met including information about the evidence requested to be obtained whether it must be made under oath or promise; if any, confidentiality requirements and reasons; as well as the desired time limit for the execution of the request and if possible also contains the identity, nationality, domicile of the person believed to be able to provide information or statements regarding an investigation, prosecution and examination at a court hearing; a description of the information or statement requested to be obtained; a description of the documents or other evidence requested to be submitted, a description of the person believed to be able to present such evidence; and information about the financing and accommodation required of the person requested to arrange his presence in the foreign country.
- 2) As opposed to the request process, 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 which is then forwarded to the Chief of Police or the Attorney General if the conditions have been met and if the conditions have not been met, the Minister can send a request to complete it. If it is rejected, the Minister shall notify the basis for the refusal to the requesting country. For the Attorney General's Office, all requests for assistance from abroad to Indonesia, from the *Central Authority will be* submitted to the Bureau of Legal and Foreign Cooperation which will then be forwarded to the relevant unit.¹⁴

Basically, Mutual Legal Assistance is one of the five forms of international cooperation according to the 2003 United Nations Convention on Corruption or UNCAC.¹⁵ Mutual Legal Assistance agreements can be implemented bilaterally or multilaterally. If the Mutual Legal Assistance agreement is carried out bilaterally, then negotiations on the content of the agreement 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.¹⁶ The agreement between Indonesia and Australia signed in 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.¹⁷

The brief content of the bilateral agreement between Indonesia and Australia on mutual assistance is that the agreement can be implemented as long as the content of the agreement does not conflict with the rules of law in Indonesia or in Australia. The rule of law here relates to mutual assistance, where Indonesia already has Law No. 1 of 2006 concerning Mutual Assistance in Criminal Matters to

¹⁴ Irma Sukardi, Loc.cit, pp. 66-68.

¹⁵ Siswanto Sunarso, 2009. *Extradition and Mutual Assistance in Criminal Matters*. International Criminal Law Enforcement Instrument, Jakarta : RinekaCipta, p. 133.

¹⁶ Bphn.go, accessed from https://bphn.go.id/data/documents/lit_2012_-_7.pdf, on January 29, 2022.

¹⁷ Irma Sukardi, *Mutual Legal Assistance Mechanism in Confiscation of Assets Resulting from Corruption Based on Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters*. (Thesis, University of Indonesia, Jakarta 2012), p.33.

accommodate the implementation of the agreement. Australia has mutual assistance regulations set out in *the Australia Mutual Assistance in Criminal Matters* 1987 which were amended in 1988 and 2004.¹⁸ Parties to the agreement, both bilateral and multilateral agreements, can request assistance from the Government of Indonesia based on the terms agreed in the agreement, and vice versa, the Government of Indonesia can also request assistance from other countries that are parties to the agreement. In principle, handling transnational crime requires cooperation with other countries, because this has proven to be a benchmark for the success of national law enforcement for transnational crime. Of course, without an agreement related to the prerequisites, the agreement is not absolute, this is because law enforcement cooperation can be carried out based on the principle of reciprocity (reciprocity).¹⁹

The Mutual Legal Assistance Agreement between Indonesia and Australia stipulates that only crimes violate bribery laws and not corruption laws. Therefore, mutual assistance in this agreement only covers the criminal act of bribery corruption, while corruption of other types than bribery can be granted at the discretion of the requested State. In connection with the provision of such assistance, efforts may be made to seek, detain and confiscate the proceeds of a crime whose execution shall be under the law of the requested State or the law of the requesting State, provided that it does not conflict with the law of the requested State.²⁰ The Mutual Legal Assistance Agreement between Indonesia and Australia certainly opens up space to be provided assistance for actions relevant to those related to this agreement, both before and after the entry into force of the agreement. Therefore, Mutual Legal Assistance can be provided to the requesting State. This is because bribery is included in one type of corruption crime, but on the other hand it is possible to provide assistance to 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 with the aim of seizing assets resulting from corruption can also be provided assistance to criminal acts before the entry into force of this agreement. This provision can maximize the efforts of the government of the Requesting State in order to return assets resulting from corruption crimes located in the Requested State.²¹

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 effective cooperation with the aim of enforcing the law and implementing justice between the two countries which includes:

- a) collection of evidence/evidence and to obtain testimony, including the execution of the rogatoir letter;
- b) submission of documents and other records;
- c) location and identification information of the person;
- d) execution of applications in search and seizure;
- e) efforts to seek, detain, and confiscate the proceeds of crime;
- f) 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;
- g) submission of documents; and

¹⁸Syaputra R X, *Mutual Legal Assistance Indonesia with Australia in the Return of Assets from Corruption Crimes*. Retrieved from https://www.academia.edu/30792443/Mutual_Legal_Assistance_Indonesia_dengan_Australia_dalam_Pengembalian_Aset_has_il_Tindak_Pidana_Korupsi. On January 28, 2022.

¹⁹Bphn.go, *op.cit*, page 19.

²⁰Ika Yuliana Susilawati, *Seizure of Assets Resulting from Corruption Crimes Abroad through Mutual Legal Assistance*. IUS Journal Vol. IV, No. 2, 2016. page 142.

²¹*Ibid.*, page 143.

- h) any other relief consistent with the purposes of this Agreement so long as it does not conflict with the laws of the requested State.

Furthermore, there are several reasons for reinforcement that become the background of Mutual Legal Assistance between Indonesia and Australia, including:

- a) In order to create foreign relations based on free and active politics aimed at national interests developed through strengthening friendship and cooperation both at bilateral and multilateral levels in the framework of realizing a new world order based on independence, lasting peace, and social justice.
- b) The emergence of negative impacts due to the development of science and technology is the emergence of crimes that no longer know the boundaries of national jurisdiction and therefore must be overcome and eradicated through cooperation between countries.
- c) There is evidence of good cooperation in the criminal sector between the Republic of Indonesia and Australia which began with the existence of an Extradition Agreement (Law Number 8 of 1994) to further strengthen cooperation between the Republic of Indonesia and Australia, then a Mutual Assistance agreement was made in Criminal Matters.²²

However, in practice, of course, there are various obstacles in the implementation of mutual legal assistance. According to Efi Laila Kholis (Head of Litigation and Non-Litigation Section of KPK Law Bureau) and Dion Valerian (Functional KPK Law Bureau) there are four obstacles that often arise in requests for the implementation of *Mutual Legal Assistance*, including:

1. There are differences in legal systems and traditions between the Requesting State (Indonesia) and the Requested State;
The legal system can be interpreted as an order or complete unity related to interconnected parts or elements. When a problem arises, it can be solved by the legal system itself, and each part cannot stand alone.
Between Indonesia and Australia has a fundamental difference in the legal system, namely the legal systems of Indonesia and Australia require the two countries to harmonize existing regulations. This is to avoid overlapping authority and application of norms.²³
2. The process of submitting a *Mutual Legal Assistance* application takes a long time;
3. Often the anti-corruption agency of the KPK RI in the Requested State is willing to help but the Requested State itself must follow legal procedures so that it cannot act immediately;
4. The requesting country did not respond to *the KPK's Mutual Legal Assistance* processing.²⁴

The difficulty or obstacle that is often encountered in the implementation of *Mutual Legal Assistance* is the problem of returning assets resulting from corruption to the applicant country. This usually happens because the asset return process involves two countries and the requested country is considered not serious in handling it so that it seems protracted.

5. Barriers related to bank *secrecy issues*,

Basically, when viewed from the content of its rules, UNCAC offers the possibility to facilitate the return of assets derived from corruption hindered by the principle of bank secrecy, provided that the country where the funds are deposited also ratifies UNCAC. This is based on Article 40 of UNCAC which states that:

²² Law Number 1 of 1999 concerning the Ratification of the Agreement between the Republic of Indonesia and Australia concerning Mutual Assistance in Criminal Matters.

²³ Syaputra R X, Loc., cit.

²⁴ NoverioAdyPrakoso. 2017. *Implementation of Mutual Legal Assistance in Resolving Corruption Cases (Study at the Corruption Eradication Commission)*. Retrieved from <http://repository.unika.ac.id/16041/4/13.20.0053%20Noverio%20Ady%20P%20-%20BAB%20III.pdf>, on January 29, 2022.

“Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with 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”.

This arrangement states that each State Party shall ensure that its national legal system has adequate mechanisms in place to remove any obstacles that the Bank Secrecy Act may pose to enforcement proceedings against criminal cases specified in UNCAC.²⁵

This provision regarding bank secrecy certainly has the potential to make some countries become a destination for corruptors to hide assets resulting from corruption because they consider the country very safe. However, on the basis of the signing of the UNCAC, States Parties shall prepare mechanisms appropriate to their own countries' legal systems to address barriers to bank secrecy.²⁶

The Bank Secrecy Act (BSA) basically serves to expose the existence of money laundering and terrorism financing. However, the responsibility of *the Bank Secrecy Act* has evolved as a financial institution that implements and develops procedures for monitoring customer transactions, identifying suspicious activity, and then reporting it to law enforcement officials. This principle was later applied in the *Australia Reserve Bank Act 1959* which gave freedom to banks to divulge customer confidentiality if used for the purpose of disclosing a case. This is set out explicitly in Art. 79A and Art. 79B of the *Australian Reserve Bank Act 1959*.

Regarding the provisions of the *Mutual Legal Assistance in Criminal Matters Agreement*, one of its clauses states that legal assistance can be refused if it is proven to be detrimental to a company or legal entity owned by the Australian Government. This is of course very interesting when applying a slightly radical understanding of assets resulting from criminal acts, especially the proceeds of corruption stored in the *Reserve Bank of Australia* because with a large nominal can benefit the bank's own income.²⁷

In returning assets resulting from criminal acts, corruption is always contrary to the political will of the state. This conflict is caused by the existence of authoritarian regimes that commit corruption. Political will can also be seen from the slow implementation of Law No.1 of 2006 concerning mutual legal assistance. Seven years have passed since Indonesia ratified the MLA agreement with Australia. It is clear that the political will at issue is not from the Australian side, but from the top brass in Indonesia. The system should be in harmony, both those who implement, make legislation and even enforce it must synergize with each other. This harmonization can resolve disputes or minimize the chances of conflicts and clashes in law enforcement carried out by law enforcement officials and facilitate the exercise of authority to recover assets resulting from criminal acts of corruption.²⁸

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

The implementation of the application of *Mutual Legal Assistance* in the return of assets resulting from corruption crimes between Indonesia and Australia can be seen from MLA's request from Indonesia to Australia in the case of Hendra Rahardja. Hendra Rahardja, a life sentence convicted of corruption by misappropriating Bank Indonesia Liquidity Bank (BLBI) amounting to Rp 2.659 trillion, submitted false reports to Bank Indonesia and embezzled customer deposits. The court sentenced him to life

²⁵Yasonna H. Laoly, *Diplomacy Investigating Transnational Crimes*. (Jakarta: Pustaka Alvabet, 2019), p. 133.

²⁶ Marcella Elwina Simandjuntak, *Mutual Legal Assistance: International Cooperation in Combating Corruption*. MMH, Volume 42 No. 1 January 2013, pp. 136-137.

²⁷Syaputra R X, Loc., cit.

²⁸*Ibid.*, Shaputra R X.

imprisonment for his actions. Before the Attorney General's Office handled Hendra Rahardja's corruption case, the National Police had completed investigations into alleged banking crimes committed by Hendra Rahardja and friends. Thanks to cooperation with Interpol, Hendra Rahardja who fled abroad was able to be arrested in Australia.

In addition, the National Police has also applied for extradition and after Australia processed the extradition request, Australia granted it. However, due to the length of the extradition process, Hendra Rahardja fell ill during his planned extradition to Indonesia and was treated at a hospital in Sydney, Australia, until his death on January 26, 2003. It was known through the cooperation of Interpol, that Hendra Rahardja had quite a lot of assets in Australia and the information was provided to the National Police by the Australian police (AFP). Related to this, Indonesia then applied for *Mutual Legal Assistance* assistance to Australia to seize Hendra Rahardja's assets in Australia which allegedly stemmed from criminal acts committed in Indonesia.

In order to take legal action related to Hendra Rahardja's assets, a team of "*Task Force Indonesia Australia*" was formed with the aim of collecting various things needed in legal proceedings in Australia. 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 and when the Australian Police and Prosecutor's Office wanted to confiscate assets and block the accounts of Hendra Rahardja and his family, it turned out that all his assets had been sold and the proceeds of the sale were transferred to several countries (Singapore, Hong Kong, PRC, United States, and others). So Australia can only block, confiscate and seize a small part of Hendra Rahardja's money (in a bank account) to be handed over to the Government of Indonesia through the Ministry of Law and Human Rights.²⁹

Hendra Rahardja's case was finally decided to be tried "*in absentia*" i.e. without the presence of the defendant at the Central Jakarta District Court. Hendra Rahardja was sentenced to life imprisonment on charges of embezzlement of Bank Indonesia Liquidity Bank (BLBI) funds that cost the state Rp 2.659 trillion, according to Public Prosecutor Andi Rahman Asbar. Hendra Rahardja allegedly stole state money along with his son, Eko Edi Putranto, who is the acting Commissioner of Bank Harapan Sentosa (BHS), and Credit Director of Bank Harapan Sentosa, ShernyKojongian. At that time the whereabouts of Eko and Sherny were unknown so both were sentenced to 20 years in prison each. From 1992 to 1996, Hendra Rahardja and the two convicts sought assistance from the "*loan committee*" in order to provide loans to BHS group subsidiaries. The provision of loans that are not accompanied by a letter of credit application and without collateral continues to increase to Rp 2.659 trillion.

The problem of this case arose when the credit given to the BHS Group was not utilized optimally as in the previous agreement. It turned out that the funds were used for other purposes such as the purchase of 85 plots of land, in Bali, Makassar, Yogyakarta, and Jakarta with an alibi using the name, company, and family of Hendra Rahardja. Then BHS faced liquidity problems and suffered losses of around Rp 50 billion per month as credit to its group faltered. So that in 1997 precisely until October 1997, Bank Indonesia (BI) provided liquidity assistance amounting to Rp 1.578 trillion on condition that BHS was obliged to return it. However, the funds and interest were non-refundable until November 1, 1997 at which time BHS was liquidated.

The defendant was found to be unable to comply with BI's order not to provide credit or payment to BHS group companies. It was proven that in 1997 the defendant was able to take funds from BHS through its group companies in the amount of Rp 305.345 billion and US \$ 2.305 million, this had a huge

²⁹ Bphn.go.id, accessed from https://www.bphn.go.id/data/documents/bantuan_timbal_balik_dlm_masalah_pidana.pdf. On March 10, 2022.

impact on the country's financial sector and disrupted the Indonesian economy. In this case, the extradition treaty between Indonesia and Australia is considered impractical because in practice the Australian judicial stage requires a long process and time, and results in the death of Hendra Rahardja before being extradited. From this it can be seen that in practice *Mutual Legal Assistance* is preferred in law enforcement between countries, because it is considered more practical.³⁰

Furthermore, this case developed until now, the case of Hendra Rahardja became the only case in Indonesia that succeeded in seizing assets from crime in Australia. Based on the Central Jakarta District Court Decision Number 1032 / PID. B/2001/PN. JKT. PST. The guideline for law enforcement officials in forfeiting assets belonging to Hendra Raharja in Australia is to use the *Mutual Legal Assistance* cooperation agreement between Indonesia and Australia. In the agreement, Indonesia asked Australia for the presence of Indonesian assets in Australia. The position of Indonesia as the requesting country and Australia as the requested party, requires Indonesia to first ascertain whether the assets that are the proceeds of crime are within its jurisdiction and that it must trust the existence of assets located in its jurisdiction.

The existence of information, documents and evidence obtained makes Australia a country that is required to prevent, buy and sell, divert or destroy the proceeds of crime, until the issuance of a final decision from the Indonesian State Court. 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. This lasts as long as it is permitted under Australian law as the country requested. This was fulfilled by Australia by conducting a legal request process from Indonesia based on Australian law to seize and block assets from Hendra Rahardja.³¹

In connection with a request for assistance to locate and return Hendra Rahardja's assets 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 convicted Hendra Rahardja amounting to USD 398,478.87 to Australia to be handed over to the Government of Indonesia. In following up on this, the Australian government has asked the Director of International Treaties, Directorate General of AHU, Department of Law and Human Rights to open a special account for the receipt/disbursement of funds amounting to USD 398,478.87. In order to fulfill this purpose, the Attorney General's Office has submitted to the Minister of Law and Human Rights an account to accommodate the funds, namely at Bank Rakyat Indonesia with Number: 000001933-01-000638-30-1 on behalf of the treasurer of the expenditure of the Attorney General of the Republic of Indonesia and by the Minister of Law and Human Rights with a letter dated July 27, 2006 has been forwarded to the Attorney General of Australia.

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.³²

³⁰ Valentino Heisel Jonathan Rotinsulu, Daniel F. Aling, Natalia L. Lengkong. *Position of Extradition Treaties in International Law and National Criminal Law*. Lex Administratum, Vol. IX/No. 4/Apr/EK/2021, hakaman 241-242.

³¹ Kausar DwiKususma, Loc.cit., pages 17-18.

³² The Indonesian Prosecutor's Office, accessed from https://www.kejaksaan.go.id/unit_kejaksaan.php?idu=2&sm=3 on April 30, 2022.

Conclusions and Advice

The creation of *Mutual Legal Assistance* cooperation between Indonesia and Australia is due to several reasons supporting the cooperation, First, to increase effective cooperation in the context of law enforcement and judicial implementation between Indonesia and Australia. Second, to create foreign relations based on active free politics. Third, it is necessary to overcome and eradicate it through cooperation between Indonesia and Australia because the development of science and technology has a negative impact, namely the emergence of criminal acts that no longer know the boundaries of a country's jurisdiction. Fourth, in order to further enhance cooperation between the two countries so that a Mutual Assistance Agreement in Criminal Matters was made between Indonesia and Australia.

The implementation of the application of *Mutual Legal Assistance* in the return of assets resulting from corruption between Indonesia and Australia can be seen from the case of Hendra Rahardja. This case is the only case in Indonesia that has succeeded in seizing assets from crime in Australia. In the agreement, Indonesia asked Australia for the presence of Indonesian assets in Australia. Indonesia's position as a requesting country requires Indonesia to first ascertain whether the assets that are the proceeds of crime are in its jurisdiction. However, there are still several obstacles in terms of returning assets resulting from corruption which result in the return of these assets becoming protracted and often causing difficulties for the country concerned.

Thus, *Mutual Legal Assistance* cooperation between Indonesia and Australia must be carried out based on Law Number 1 of 1999 concerning the Ratification of the Agreement Between the Republic of Indonesia and Australia concerning Mutual Legal Assistance in Criminal Matters. This is so that corruptors who flee to the country concerned can be immediately tried in accordance with applicable law. In addition, maximizing efforts to return state assets located in other countries by encouraging the government to immediately enter into *Mutual Legal Assistance Agreements* with other countries suspected of being places where assets resulting from corruption are stored.

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