

CHAPTER I

INTRODUCTION

A. Background

Various forms of corruption will remain a common enemy for the Indonesian people and all nations worldwide. The development of types of corruption is directly proportional to the increase in corruption, which results in corruption being categorized as an extraordinary crime, crossing national borders and without borders.¹ Corruption is no longer a national issue but an international one. Corruption has spread across national borders in various types and forms, including illegally appropriating government assets. The fourth paragraph of the United Nations Convention Against Corruption (UNCAC) says that corruption has become a transnational phenomenon that impacts the socio-economic community and requires international cooperation.² In this matter, there must be an effective form of eradication.

The eradication effort must focus on three significant issues: prevention, eradication, and asset recovery. These three reasons emphasize the need to recover state financial losses in addition to preventive and punitive measures.³ Various forms of corruption are mainly carried out by perpetrators, especially money laundering, where perpetrators hide assets in foreign bank accounts so that it will be more difficult for the state or law enforcement to find and retrieve

¹ Ridwan Arifin, Indah Sri Utari, and Herry Subondo, "Upaya Pengembalian Aset Korupsi Yang Berada Di Luar Negeri (Asset Recovery) Dalam Penegakan Hukum Pemberantasan Korupsi Di Indonesia", *IJCLS (Indonesian Journal of Criminal Law Studies)* Vol 1 No 1, (2017), P. 106, doi: <https://doi.org/10.15294/ijcls.v1i1.10810>.

² United Nations, (2000), United Nations Convention Against Corruption

³ Ade Mahmud, "Urgensi Penegakan Hukum Progresif Untuk Mengembalikan Kerugian Negara Dalam Tindak Pidana Korupsi", *Masalah-Masalah Hukum* Vol 49 No 3, (2020), P. 257, doi: <https://doi.org/10.14710/Mmh.49.3.2020.256-271>.

these assets.⁴ When public assets are lost due to corruption, it is difficult to get them back because the perpetrators have a unique access and are difficult to find if they are hiding or laundering money.⁵

Even this money laundering is perfected by accountants, lawyers, and even bankers hired by corruptors. Returning state assets stolen through corruption takes work to do. Perpetrators have extraordinary access and are difficult to reach in hiding assets resulting from corruption. Even though Indonesia has carried out various international collaborations, Indonesia remains made many efforts to facilitate the process of returning assets³¹ resulting from corruption to Indonesia.

In Law Number 7 of 2006 concerning Ratification of the UNCAC, Indonesia has ratified the UNCAC as a form of cross-border anti-corruption enforcement, where so far, the Indonesian government has had difficulty returning the assets of corruptors abroad. By ratifying the Convention, Indonesia can use it as a new instrument for asset recovery.⁶ The UNCAC contains substantial information indicating a shift in perspective on several aspects of corruption, including legal issues, human rights, sustainable development, poverty, security, the reserved burden of proof, and mutual legal assistance.⁷ Countries that are members of the Convention and have ratified it, like

⁴ Michael Levi, "Evaluating the Control of Money Laundering and its Underlying Offences: the Search for Meaningful Data", *Asian Journal of Criminology*, Vol 15 No 1, (2020), P.307, <https://doi.org/10.1007/s11417-020-09319-y>.

⁵ *Op. Cit.*, Ade Mahmud, P. 258.

⁶ Levina Yustitiantingtyas, & Friends, "Extradition as an Effort to Restore Corruption Perpetrators Who Escape Abroad", *Tests: Engineering & Management*, Vol 83 No 1, (2020), P. 11909. ISSN: 0193-4120

⁷ Bisdan Sigalingging, "Bantuan Hukum Timbal Balik Dalam Perampasan Aset Korupsi Antar Lintas Batas Negara", *Iuris Studia: Jurnal Kajian Hukum*, Vol 2 No 3, (2020), P. 387–388, <https://doi.org/10.55357/is.v2i3.152>.

Switzerland, can make agreements to help each other with legal matters. In particular, Switzerland is a special place for corruptors to hide assets resulting from corruption. There are several corrupt individuals of significant influence involved in embezzlement, including notable figures like Irawan Salim, the former managing director of Bank Global, whose assets amount to USD 9.9 million, and ECW Neloe, the Director of Bank Mandiri, whose assets amount to USD 5 million. These ill-gotten assets are currently held in Switzerland. The substantial amount of wealth stored in Switzerland represents a colossal loss for Indonesia.⁸ From the facts above, Indonesia is maximizing its efforts to be able to return these assets.

On February 4, 2019, Indonesia and Switzerland signed an MLA, which was ratified by Indonesia Government through Law Number 5 of 2020 concerning Ratification of Mutual Legal Assistance in Criminal Matters between Indonesia and the Swiss Confederation. The form of the international treaty involves crucial and fundamental issues for the two-country in terms of legal norms that apply specifically to the parties.⁹ This treaty is a continuation of the extradition agreement and is a promise for both parties to work together and share information on how to stop and eradicate transnational crimes. Not only that, but this Agreement is also a big opportunity for Indonesia to recover assets due to corruption hidden in Switzerland.

⁹ Teguh Yuwono, Retno Kusniati, & Budi Ardianto, “Bantuan Hukum Timbal Balik dalam Penanganan Kejahatan Transnasional: Studi Kasus Indonesia-Swiss”, *Uti Possidetis: Journal of International Law*, Vol 2 No 3, (2021), P.271, doi: <https://doi.org/10.22437/up.v2i3.13042>

Some view the MLA between Indonesia and Switzerland as a diplomatic success. Switzerland is the largest financial center in Europe, known for its strict banking security and privacy laws. Banks in Switzerland have a reputation for excellent safety and high effectiveness and are among the safest private funds in the world. But some still think that an MLA between Switzerland and Indonesia is impossible. Since this Agreement is still new, it has yet to be shown to positively affect both success and the return of assets to Indonesia.

Based on the background above, the author is interested in studying how the eradication was carried out, especially the recovery of hidden assets in Switzerland, considering that MLA is still relatively new. Furthermore, this study will examine the implementation of MLA between Indonesia and Switzerland as a reciprocal treaty regarding the return of state assets due to corruption.

B. Problem Formulation

How is the implementation of MLA between Indonesia and Switzerland in returning state asset?

C. Research Objectives

The general objective to be achieved in this research is to find out how MLA can be used to restore state assets lost due to corruption. The specific objectives of this study are as follows: To find out the implementation of MLA between Indonesia and Switzerland is being implemented to get back state assets.

D. Benefit of Research

The benefits of research are an essential thing that cannot be separated from research, while the benefits obtained from research are:

1. Theoretical Benefits

This research can be a source and reference material to add to the literature on transnational criminal law.

2. Practical Benefits

- a. This research is expected to develop the author's dynamic reasoning and mindset.
- b. This research is expected to provide advice to related anti-corruption law enforcement institutions so that this research can help enforce anti-corruption laws in Indonesia.

E. Research Methods

1. Type of Research

This research uses normative legal research, commonly known as doctrinal legal research. This normative legal research uses a statutory approach and a comparative approach.

2. Types of Data

- a) Primary Legal Materials

Primary legal material is the leading legal material that is authoritative, namely, legal material that has authority. Primary legal materials include laws and regulations and all official documents containing national and international legal provisions, such as:

- 1) United Nations Convention Against Corruption (UNCAC);
- 2) United Nations against Transnational Organized Crime (UNTOC);
- 3) United Nations Office on Drugs and Crime (UNODC);
- 4) ASEAN Mutual Legal Assistance in Criminal Matters

- 5) Law No. 7 of 2006 on Ratification of the UNCAC;
- 6) Law No. 1 of 2006 on Mutual Legal Assistance in Criminal Matters;
- 7) Law No. 5 of 2020 on the Ratification of the MLA between Indonesia and Switzerland;
- 8) Law Number 2 of 2002 on the Indonesian National Police;
- 9) Law Number 30 of 2002 on Corruption Eradication Commission;

b) Secondary Legal Materials

Secondary legal materials are legal materials that explain legal materials such as: books, articles, journals, research results, and papers relevant to the issues to be discussed.

c) Tertiary Legal Materials

Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials such as dictionaries.

3. Data Collection

The data were collected through a library-based study. The research has reviewed books, literature, records, and reports that relate to the problem to be solved. This technique is used to obtain the basics and opinions in writing, which is done by studying related literature about the problem under study.

4. Data Analysis

Collected data are verified correctly and legally under international and current national laws. As a result, the facts are examined methodically

using qualitative legal techniques that are systematically carried out by assessing and collecting relevant data.

F. The Systematic of the Undergraduate Thesis

The author's proposed undergraduate thesis' outline is like most other outlines. This undergraduate thesis has an introduction, literature review, research method, content of the discussion, and conclusion, as follows:

Chapter one the introduction consists of the following: background, problem formulation, research objectives, research benefits, concept limitations, research methods, and undergraduate thesis writing systems.

Chapter two of the undergraduate thesis will explore what corruption implies from the perspective of experts, positive laws in Indonesia, and various significant dictionaries. Furthermore, this chapter will address how corruption may be exploited as a transnational crime, covering many justifications and the legal framework in both international and national circles.

In chapter three, MLA will be discussed in the undergraduate thesis. Starting with a definition of MLA, we will discuss the legal framework for MLA within international law, the Legal Framework for MLA in the Southeast Asia (ASEAN) and the Legal Framework for MLA in the Indonesian Positive Law Sphere.

In chapter four, the formulation of the issue included in this research will be addressed: how is the implementation of mutual legal assistance in criminal matters between Indonesia and Switzerland in recovering state assets due to criminal acts of corruption? The discussion will begin with why Indonesia needs to enter into MLA with Switzerland, followed by a discussion of the procedures

between the two countries in carrying out this MLA and what evidence of the outcome of the MLA in returning assets due to criminal acts of corruption.

Then chapter five is the conclusion that will be part of the results and discussion/recommendations of the undergraduate thesis. This area defines the information that the author collects and compares it with the information that the author places in the literature review. In conclusion, the author will show how the result of this thesis is similar or different from the results of other studies or how the results can defend or disprove other theories.