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# Mutual Legal Assistance in the Indonesia-Cambodia Kidney Sale Investigation

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## Abstract

The structure of this paper is to describe and discuss the issue of combating human trafficking in the ASEAN region, with a focus on the Mutual Legal Assistance Treaty (MLA) as a legal strategy and collaborative approach. Human trafficking is a serious violation of human rights and a complex transnational crime. It requires comprehensive effort and cooperation between countries. This paper examines the existing law, policy, and institutional mechanisms for addressing this issue. The paper identifies the challenges that MLA, as an international and bilateral convention and agreement, and regional cooperation within ASEAN face in strengthening the legal framework and improving coordination among states. We need MLA as a more robust and unified legal approach that encompasses prevention, prosecution, protection, and collaboration. Actors are essential to effectively combat human trafficking and support victims. The methods used in this research include comparative legal analysis. Close cooperation between ASEAN countries in prevention, prosecution, and victim protection requires the strong legal framework of MLA. MLA should also enhance cross-border cooperation and more effective information exchange to tackle the challenges of human trafficking in ASEAN.

**Keywords:** ASEAN, Human Trafficking, and Mutual Legal Assistance

## 1. INTRODUCTION

This research will discuss the application of Mutual Legal Assistance in Criminal Matters, or more popularly, Mutual Legal Assistance (MLA), in the investigation of organ trafficking crimes in ASEAN. Kidney transplants are the most common type of organ transplant, followed by liver transplants and heart transplants.<sup>1</sup> This technological advancement in healthcare is not only benefiting the medical community, but it is also creating opportunities for illegal human organ trafficking syndicates. This research aims to analyze the role of ASEAN Mutual Legal Assistance (MLA) in the law enforcement of cases involving human trafficking, specifically the sale of kidneys from Indonesia to Cambodia. MLA, a form of bilateral and multilateral cooperation, facilitates the exchange of information and evidence to support the law enforcement process in other countries. Mutual legal assistance (MLA) agreements are an effective way for victim countries to circumvent traditional borders that have been an obstacle to the recovery of stolen assets by law enforcement authorities.<sup>2</sup> In this case, Polda Metro Jaya law enforcement successfully arrested 12 suspects of trafficking in persons (TPPO), who were involved in the sale of kidneys from Indonesia to Cambodia. A total of 122 Indonesian citizens became victims of this TPPO syndicate. After uncovering this case, the National Police formed a team to help victims and conduct medical examinations. Of the 12 suspects, there are

<sup>1</sup> Astuti Nur Fadillah and Abbas Mahmud, "Perdagangan Organ Tubuh Manusia Sebagai Kejahatan Lintas Negara," *Balobe Law Journal* 3, no. 2 (2023): 56, <https://doi.org/10.47268/balobe.v3i2.1822>.

<sup>2</sup> Teguh Yuwono, Retno Kusniati, and Budi Ardianto, "Bantuan Hukum Timbal Balik Dalam Penanganan Kejahatan Transnasional: Studi Kasus Indonesia-Swiss," *Uti Possidetis: Journal of International Law* 2, no. 3 (2021): 273, <https://doi.org/10.22437/up.v2i3.13042>.

coordinators in Indonesia and Cambodia, and some act as liaisons. Two other suspects, including a police officer and an immigration officer, were also involved. Most of the suspects are former kidney donors. The syndicate targeted victims by creating group accounts on Facebook under the names "Kidney Donor Indonesia" and "Kidney Donor Overseas." To convince victims, they promise family gathering activities abroad.<sup>3</sup>

Across national borders, human trafficking is an organized crime. It includes practices for forced labor exploitation, sexual exploitation, forced labor exploitation, and the sale of human organs.<sup>4</sup> Medicine is not the only factor in the need to cure diseases; certain organs are also involved. Close family members typically donate organs. The process of organ donation is expensive and risky. The individuals involved, along with the constraints in organ accessibility, pose significant challenges.<sup>5</sup>

In his research, Gemy (2019) stated that the ASEAN-MLAT state parties must provide various forms of legal assistance as outlined in Article 1(2) of the treaty. These include gathering evidence and obtaining voluntary statements from individuals; arranging for individuals to provide evidence or assist in criminal matters; serving judicial documents; conducting searches and seizures; examining objects and sites; providing original or certified copies of relevant documents, records, and evidence; identifying or tracing property obtained through criminal activity; restraining property transactions or freezing property derived from criminal activity that may be recovered, forfeited, or confiscated; recovering, forfeiting, or confiscating property obtained through criminal activity; and locating and identifying witnesses and suspects.<sup>6</sup>

Saputra (2021), in his research, says that the limited stock of kidneys has the potential to encourage illegal organ sales.<sup>7</sup> Poor people in one country may sell their organs to rich people in another country. The practice of selling organs, due to economic reasons, remains illegal and unethical. The sale of human organs violates human values and rights, denying a person their right to life and integrity. Therefore, we must take legal measures to address the sale of organs that violate established international standards.

<sup>3</sup> Dwi Arjanto, "6 Fakta Kasus TPPO Jual Beli Ginjal Di Kamboja," Tempo.co, 2023, <https://nasional.tempo.co/read/1752070/6-fakta-kasus-tpo-jual-beli-ginjal-di-kamboja>.

<sup>4</sup> Khairi Fikhri Naufal, "Upaya ASEAN Dalam Menangani Masalah Perdagangan Manusia Di Asia Tenggara," *Umpalangkaraya* 20, no. 2 (2021): 84, <https://doi.org/https://doi.org/10.33084/anterior.v20i2.1795>.

<sup>5</sup> Muhammad Zen Abdullah and Fatriansyah Fatriansyah, "Analisis Yuridis Terkait Tindak Pidana Jual Beli Organ Tubuh," *Legalitas: Jurnal Hukum* 14, no. 1 (2022): 159, <https://doi.org/10.33087/legalitas.v14i1.318>.

<sup>6</sup> Gemy Lito L. Festin and James Gregory A. Villasis, "The Dual Criminality Principle in the Association of Southeast Asian Nations-Mutual Legal Assistance Treaty in Criminal Matters (ASEANMLAT): Prosecuting Transnational 'Cyber-Human Trafficking' in the Southeast Asian Region," *Asia Pacific Journal of Multidisciplinary Research* 7, no. 2 (2019): 88–95, <http://www.apjmr.com/wp-content/uploads/2019/05/APJMR-2019.7.2.2.10.pdf>.

<sup>7</sup> Trini Handayani, "The Criminal Law's Functionalization Against The Trafficking Of Kidneys For Transplant Purpose," *Jurnal Pembaharuan Hukum* 3, no. 2 (2021): 8, file:///C:/Users/MSI MODERN/Downloads/13389-43299-1-PB (3).pdf.

In his article, Dildora (2022) stated that the mechanism for international cooperation in criminal matters through diplomatic channels is usually based on bilateral or multilateral agreements, or the principle of reciprocity between states.<sup>8</sup> As a result, if a state requests international cooperation in criminal matters in the FRG, it should first send the request to the Ministry of Foreign Affairs. After the Ministry has instructed the Federal Office of Justice to execute the request, the Office shall forward the request to the Ministries of Justice of the Federal Lands on the basis of territorial affiliation. The prosecutor's office and the judiciary will initiate the relevant process after receiving a request from the Ministry of Justice for international cooperation in criminal matters. The said mechanism will facilitate international cooperation once the requesting state has made a decision on whether to accept or reject the request.

In their study, Prawira (2023) In addition to being signatories to international treaties, ASEAN member nations have also entered into several bilateral mutual legal assistance treaty (MLAT) agreements with both regional and non-regional governments.<sup>9</sup> Signing the AMLAT agreement is only the first phase in showcasing the country's commitment to offering Mutual Legal Assistance Treaties (MLAT) as a means to fight transnational crime. AMLAT needs assistance in accordance with international law. Historically, member nations have engaged in international collaboration by exchanging rogatory letters. Therefore, seeking aid through these conventional channels does not legally obligate the recipient government to accept or respond to the request. AMLAT facilitates the exchange of assistance among member nations to collect evidence and information in criminal investigations and judicial proceedings. Furthermore, it assists ASEAN member countries in fulfilling their responsibilities as outlined in several Mutual Legal Assistance Treaties (MLATs) established by different United Nations treaties.

How this study differs from the earlier studies mentioned above an important finding in this research is that the Mutual Legal Assistance system was unable to effectively deal with the kidney organ trafficking case involving Indonesia and Cambodia. Despite the matter receiving significant public attention for a year, there has been a lack of concrete action taken after that. The authorities of both nations have shown a limited reaction, as shown by the investigative process coming to a halt when the Indonesian Ministry of Foreign Affairs sent a diplomatic letter. This suggests significant challenges in implementing the Mutual Legal Assistance Treaty (MLAT). This implies that the existing MLAT framework is insufficient in addressing intricate international crimes like organ trafficking.

<sup>8</sup> Umarghanova Dildora, "International Cooperation In Criminal Matters (Based On The Analysis Of German And Uzbek Legislation)," *Berlin Studies Transnational Journal of Science and Humanities* 2, no. 1 (2022): 109, <https://doi.org/https://doi.org/10.5281/zenodo.6430628>.

<sup>9</sup> 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, <https://doi.org/10.18196/iclr.v5i2.17435>.

## 2. METHOD

The legal research conducted is normative legal research in order to produce arguments as suggestions for solving the legal problems at hand. This paper is also reviewed using two approach methods, namely, a conceptual approach based on doctrines that develop in the world of legal science. The second method is the statute approach, an approach to legislation that connects to the legal issues under analysis. In addition, the legal materials used in this research are laws and regulations, commonly called primary legal materials. Books, scientific journals, and expert research results are the next legal materials, commonly referred to as secondary legal materials.<sup>10</sup>

## 3. RESULTS AND DISCUSSION

### 3.1 Agreements in International Treaties on Mutual Legal Assistance in Criminal Matters.

The ASEAN Declaration on Transnational Crime is the first ASEAN declaration of cooperation to address transnational crime. The declaration was agreed upon in 1997 in Manila during the ASEAN Home Affairs Ministers' meeting. This meeting also marked the establishment of the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) forum. This forum also tackled the problem of transnational crime by promoting regional cooperation and coordination. The AAMTC has since become a discussion forum for ASEAN ministers to meet on countering transnational crime, which will continue in the future. The complex social realities and practices of trafficking in human beings require more specialized and regionally-specific efforts to formulate laws and policies. Thus, laws will be effective in combating human trafficking.<sup>11</sup> Crime undergoes a transformation in line with human civilization's progress. Crime continues to evolve in terms of perpetrators, modus operandi, and impact. Traditional crimes have evolved by incorporating advanced technology. Criminality has transitioned from being committed by individuals to being masterminded by organized organizations or syndicates with global networks.<sup>12</sup> Mutual Legal Assistance (MLA) is a formal mechanism whereby one state can request assistance from another state in the investigation, prosecution, and trial of criminal matters.<sup>13</sup>

In Indonesia itself, there is a legal framework that regulates mutual legal assistance, namely Law No. 1 of 2006 concerning mutual assistance in criminal matters. Article 2 of this law aims to provide a legal basis for the Government of the Republic of Indonesia to request and/or provide mutual assistance in criminal matters, as well as guidelines for

<sup>10</sup> Muhaimin, *Metode Penelitian Hukum*, ed. Fatia Hijriyanti, 1st ed. (NTB: Mataram University Press, 2020).

<sup>11</sup> Sriprapha Petcharamesree, *Rethinking Local Citizenship and Integration of Persons of Indonesian Descent in the Southern Philippines*, *IMISCOE Research Series*, 2023, [https://doi.org/10.1007/978-3-031-25748-3\\_6](https://doi.org/10.1007/978-3-031-25748-3_6).

<sup>12</sup> Alliya Yusticia Pramudya Wardani, "Menelaah Potensi Mutual Legal Assistance Dalam Penegakan Hukum Di Indonesia," *Verstek* 9, no. 3 (2021): 545, <https://doi.org/10.20961/jv.v9i3.55042>.

<sup>13</sup> Derry Angling Kesuma, "Penerapan Mutual Legal Assistance (Mla) Dan Perjanjian Ekstradisi Sebagai Upaya Indonesia Terkait Pengembalian Aset Hasil Tindak Pidana Korupsi," *Lex LATA* 3, no. 1 (2022): 12, <https://doi.org/10.28946/lexl.v3i1.583>.



making mutual assistance agreements in criminal matters with foreign countries.<sup>14</sup> Article 3 paragraph (1) defines mutual assistance in criminal matters as a request for assistance in conducting investigations, prosecuting cases, and examining cases in court, all in accordance with the legislation of the requested state. And in article 3 paragraph (2) it is said that the assistance referred to in paragraph (1) can be in the form of identifying and searching for people, obtaining statements or other forms, showing documents or other forms, seeking the presence of people to provide information or assist in investigations, delivering letters, carrying out requests for searches and seizures, seizure of criminal proceeds, recovering monetary fines in respect of criminal offences, prohibiting wealth transactions, freezing assets that may be released or confiscated, or that may be required to satisfy fines imposed, in respect of criminal offences, searching for assets that may be released, or that may be required to satisfy fines imposed, in respect of criminal offences, and/or other assistance in accordance with this Law.<sup>15</sup>

This law does not grant any authority for the extradition or surrender of individuals, the arrest or detention of individuals for such purposes, the transfer of prisoners, or the transfer of cases. This law sets out in detail how the Government of the Republic of Indonesia may request mutual assistance in criminal matters from the Requested State and vice versa, including the requirements for making requests for assistance, for locating or identifying persons, assisting in obtaining evidence, and assisting in ensuring that individuals are present.<sup>16</sup> According to Article 1, letter (a), this law does not authorize extradition. As a result, this law does not have any rules governing the surrender of criminal offenders. Article 1 of Law Number 1 Year 1979 on Extradition states that: "In this law, what is meant by extradition is the surrender by a state to a requesting state of a person suspected or convicted of committing a crime outside the territory of the surrendering state and within the territorial jurisdiction of the requesting state, being authorized to extradite or surrender the person to the requesting state."<sup>17</sup>

According to Article 6 of Law Number 1 Year 2006 on Mutual Assistance in Criminal Matters, a court may refuse a request for assistance if it pertains to an investigation, prosecution, court examination, or a person's conviction for a criminal offense. The request for assistance pertains to an investigation, prosecution, trial, or conviction of a person for a criminal offense that, if committed in Indonesia, would not be prosecutable; e. The purpose of the request for assistance is to prosecute or try a person based on their ethnicity, gender, religion, nationality, or political opinion; f. The decision to provide assistance is based on

<sup>14</sup> "Pasal 2 Undang-Undang No 1 Tahun 2006 Tentang Bantuan Timbal Balik Dalam Masalah Pidana," Pub. L. No. 1 (2006).

<sup>15</sup> "Pasal 3 Undang-Undang No 1 Tahun 2006 Tentang Bantuan Timbal Balik Dalam Masalah Pidana," Pub. L. No. 1 (2006).

<sup>16</sup> Kus Rizkianto, "Kerjasama Internasional Dalam Penegakan Hukum Pidana Internasional," *Diktum: Jurnal Ilmu Hukum* 9, no. 2 (2022): 191, <https://doi.org/10.24905/diktum.v9i2.93>.

<sup>17</sup> Ricardo Santos and Hery Firmansyah, "Prosedur Pelaksanaan Mutual Legal Assistance Terhadap Pemulihan Aset Hasil Korupsi Yang Dilarikan Ke Luar Negeri (Procedures For The Implementation Of Mutual Legal Assistance To Recover Assets Resulting From Corruption That Are Rushed Abroad)," *Jurnal Hukum Lex Generalis* 2, no. 1 (2021): 42, <https://doi.org/https://doi.org/10.56370/jhlg.v2i1.3>.

the request itself. Approval of the assistance request would have a detrimental effect on national sovereignty, security, interests, and laws; g. The foreign state cannot guarantee the prosecution or trial of the matter in Indonesia. The foreign state cannot guarantee that the requested assistance will not be used for the handling of the case; or h. The foreign country cannot guarantee the return of evidence obtained under the assistance, if requested.

The explanation states that Article 6 Letter (a) number 1 of Law Number 1 Year 2006 on Mutual Assistance in Criminal Matters stipulates that: What is meant by "political criminal offense" in this provision is a criminal offense against state security as stipulated in the criminal law. Point 2 Letter (c) affirms that the term "cannot be prosecuted" in this provision refers to a person's actions that form the basis of a request by the Requesting State, but these actions are not classified or excluded as criminal acts. Upon examination, we can understand the provisions in Article 6 concerning the rejection of requests for assistance in criminal matters if they pertain to political offenses. This is because the Explanation of Law Number 1 of 2006, which governs Mutual Assistance in Criminal Matters, states in the explanation section that Article 6 Letter (a) number 1 confirms that a "political criminal offense" under this provision constitutes a crime against state security, as defined by the criminal law.

According to Law No. 15 of 2008, which ratifies the Treaty on Mutual Legal Assistance in Criminal Matters, Indonesia can cooperate with countries such as Brunei Darussalam, Cambodia, Laos, Malaysia, the Philippines, Singapore, and Vietnam. Mutual Legal Assistance entails bilateral, regional, and multilateral cooperation in prevention, investigation, prosecution, and criminal case handling. Mutual Legal Assistance cooperation includes the taking of evidence and statements of a person, the execution of letters rogatory, the provision of evidence such as documents and records, the identification and location of a person, and the search and seizure of evidence. In addition, this cooperation also involves the approval of persons who are willing to provide testimony or assist in investigations in the requesting country, with due regard to applicable laws and regulations.<sup>18</sup>

The MLA Agreement incorporates the principle of reciprocity, which mandates that the foreign country must first demonstrate equality before granting equality. On the other hand, retaliation initiates with equality, but it halts if the foreign country in question later demonstrates unequal treatment. So there is a difference in the onset time between these two definitions.<sup>19</sup> An international agreement uses the principle of reciprocity, which allows for the reciprocation of a state's action against another state. The principle of

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<sup>18</sup> Rima Gravianty Baskoro, "Mutual Legal Assistance Dan Re-Litigasi Sebagai Upaya Pengembalian Aset Di Luar Negeri Hasil TPPU Di Indonesia," Kompasiana, accessed July 8, 2024, [https://www.kompasiana.com/rimagraviantybaskoro6257/624d2cc6bb448660eb7dc8c2/mutual-legal-assistance-dan-re-litigasi-sebagai-upaya-pengembalian-aset-di-luar-negeri-hasil-tppu-di-indonesia?page=1&page\\_images=1](https://www.kompasiana.com/rimagraviantybaskoro6257/624d2cc6bb448660eb7dc8c2/mutual-legal-assistance-dan-re-litigasi-sebagai-upaya-pengembalian-aset-di-luar-negeri-hasil-tppu-di-indonesia?page=1&page_images=1).

<sup>19</sup> Athina Kartika Sari, *Timbal Balik Dan Pembalasan (Resiprositas) Salam Hukum Perdata Internasional*, Universitas Esa Unggul (Jakarta Barat, 2021), [https://lms-paralel.esaunggul.ac.id/pluginfile.php?file=/197406/mod\\_resource/content/20/11\\_7733\\_KUM601\\_052019\\_pdf.pdf](https://lms-paralel.esaunggul.ac.id/pluginfile.php?file=/197406/mod_resource/content/20/11_7733_KUM601_052019_pdf.pdf).

reciprocity binds the parties to an agreement, establishing equal rights and obligations as the cornerstone of their mutually desired agreement.<sup>20</sup>

Mutual Legal Assistance ASEAN (MLAT ASEAN), In criminal matters, the practice of international cooperation generally employs the instrument of extradition or mutual legal assistance (MLA). Each country's national police can conduct fact-finding, often known as Mutual Legal Assistance in Administration, to investigate facts in another country, with the aim of pursuing state assets that have strayed beyond their jurisdiction. Interpol, an international police organization, assists countries in locating pertinent facts to support reciprocal investigations related to the return of state assets. Romli Atmasasmita posits that these two legal instruments serve as forms of international cooperation, commonly employed in the prevention and combat of transnational crime.<sup>21</sup>

The MLA's objectives include the acquisition and presentation of evidence. This encompasses the collection and presentation of statements, documents, and records, the identification of individual locations, the execution of requests to search for evidence, the seizure, search, freezing, and confiscation of assets derived from crime, and the efforts to obtain consent from individuals willing to testify or assist investigations in the country requesting mutual legal assistance. In the implementation of MLA, the Minister of Law and Human Rights, as the central authority, has the authority to request authorized officials to take police action. This includes searches, blocking, seizures, examination of papers, and taking statements.

### 3.2 The investigation of kidney sales between Indonesia and Cambodia highlights the role of mutual legal assistance.

There are several reasons why Southeast Asia is the birthplace of human trafficking. The first factor is economic inequality, which leads to high levels of poverty. This lack of prosperity encourages people in Southeast Asia to seek money to fulfill their own and their families' needs. People in these poor conditions are involved in trafficking, either knowingly or unknowingly. Furthermore, high levels of corruption are a contributing factor. Corruption can exacerbate poverty by unfairly draining people's resources. In Southeast Asia, geography also plays an important role in trafficking. The region serves as a strategic route for international trade activities, making it easier for trafficking to occur. Lastly, cultural factors. Human trafficking has been going on for a long time. It has become a habit in the local community. These factors make Southeast Asia vulnerable to human trafficking, and there is a need for comprehensive efforts to address the issue.<sup>22</sup>

<sup>20</sup> Khoirur Rizal Lutfi and Retno Anggoro Putri, "Optimalisasi Peran Bantuan Hukum Timbal Balik Dalam Pengembalian Aset Hasil Tindak Pidana Korupsi," *Undang: Jurnal Hukum* 3, no. 1 (2020): 34, <https://doi.org/10.22437/ujh.3.1.33-57>.

<sup>21</sup> Agus Prasetya Wiranto and Jawade Hafidz, "The Implementation of International Law on Strengthening Cooperation in Combating Money Laundering Crimes of ASEAN Countries," *Daulat Hukum* 6, no. 4 (2023): 25, <https://doi.org/http://dx.doi.org/10.30659/jdh.v7i1.36566>.

<sup>22</sup> Nursiti Iskandar, "Peran Organisasi Internasional Dan Regional Dalam Penyelesaian Pelanggaran Hak Asasi Manusia Perdagangan Orang Di Indonesia," *Jurnal HAM* 12, no. 3 (2021): 395, <https://doi.org/10.30641/ham.2021.12.385-404>.

ASEAN member countries have different roles in trafficking. Some countries are sources for trafficked people, while others are destinations for trafficking victims. According to data from the International Organization for Migration (IOM), which the author took from an article written by Renaldi Afriansyah, four ASEAN countries, namely Laos, Cambodia, Thailand, and Indonesia, are the main contributors to human trafficking cases in the world.<sup>23</sup>

Indonesia itself has ratified the agreement through Law Number 15 of 2008 concerning the Ratification of the Treaty on Mutual Legal Assistance in Criminal Matters. According to the ASEAN MLAT Agreement, Indonesia and Cambodia have an international cooperation framework for MLA. It obligates the parties to implement MLA measures to the greatest extent possible while taking into account the requested state's national legislation. This agreement covers various types of MLA commonly found in bilateral agreements, such as evidence collection, searches, and asset seizure. In other words, the parties are committed to assisting each other in the investigation and law enforcement process related to criminal offenses, to the extent permitted by the national laws of each country. This agreement covers various forms of legal assistance commonly provided within the MLA framework, such as the taking of witness and expert testimony, the seizure and delivery of evidence, and the execution of searches and seizures.<sup>24</sup>

On April 8, 2010, Cambodia promulgated the **Law on Mutual Legal Assistance in Criminal Matters (MLA Law)**. **The Law on Mutual Legal Assistance in Criminal Matters (MLA Law)** establishes a comprehensive framework for providing MLA and the various types of assistance outlined in the following articles: Article 1 explains that the purpose of this law is to enhance international cooperation between Cambodia and other countries to effectively combat crime in relation to criminal matters, including the proceeds of criminal offenses. This is consistent with Cambodia's obligation under Financial Action Task Force (FATF) criterion 37.1 to have **a broad legal basis for mutual legal assistance**.<sup>25</sup>

This law pertains to two aspects: firstly, it mandates the provision of **legal assistance in criminal matters to all requesting states**, regardless of their lack of a treaty with the Kingdom of Cambodia; and secondly, it mandates the seeking of **legal assistance in criminal matters from all requesting states**, regardless of their lack of a treaty with the Kingdom of Cambodia. However, **this law does not apply to mutual legal assistance in criminal matters implemented in accordance with bilateral or multilateral treaties or conventions ratified by the Kingdom of Cambodia**.

<sup>23</sup> Renaldi Afriansyah, Valentine Febrianti, and Irma Sari, "Upaya Asean Dalam Menangani Human Trafficking Di Regional Asean ( Studi Kasus : Perdagangan Perempuan & Anak )," *Aufklarung: Jurnal Pendidikan, Sosial Dan Humaniora* 2, no. 3 (2022): 225, <http://pijarpemikiran.com/index.php/Aufklarung%0AUpaya>.

<sup>24</sup> Kharisma Ika Nurkhasanah and Zydane Maheswara Prasetyo, "Law Enforcement of State Jurisdiction in Hacking Crimes," *Indonesian Journal of Applied and Industrial Sciences (ESA)* 3, no. 3 (2024): 323, <https://doi.org/10.55927/esa.v3i3.9438>.

<sup>25</sup> "Basis And Kinds Of Assistance In MLA Law," Ministry Of Justice Of Cambodia § (2020), <https://moj.gov.kh/files/user-folder/2022/MLA/01-Basis and Kinds of Assistance in MLA Law.pdf>.

This law sets out the internal procedures for carrying out requests for mutual legal assistance. These procedures must be followed for all criminal cases involving mutual legal assistance, including those carried out under bilateral or multilateral treaties or conventions that the Kingdom of Cambodia has ratified. However, other provisions set out in such treaties, conventions, or other laws of the Kingdom of Cambodia shall continue to apply. This law shall not prevent requests for mutual legal assistance in criminal matters or cooperation between the Kingdom of Cambodia and a foreign state through lawful means.<sup>26</sup>

When executing treaty mutual legal assistance cooperation, the Indonesian government must adhere to the applicable national laws in the participating countries, both as the one seeking assistance and as the one receiving it. Furthermore, Indonesia's national interests must be consistent with the Republic of Indonesia's 1945 Constitution. In order for the Mutual Legal Assistance Treaty between Indonesia and other countries to be effective, consistency from the Indonesian government and partner countries is very important. Both parties are required to comply and adhere to the ratified bilateral agreements. The provisions agreed upon in the agreement between the two countries must guide the process of receiving and providing mutual assistance.<sup>27</sup> The central role of authorized agencies in facilitating the MLA process is undeniable. They include central authorities responsible for making and receiving MLA requests; authorized agencies responsible for executing MLA requests, usually the police, prosecution, or courts; and other relevant agencies, such as the FIU, financial institutions (e.g., banks), and professionals (e.g., lawyers, notaries, or accountants). In practice, executive bodies may receive and grant MLAs through the Central Authority or directly to the foreign counterpart.<sup>28</sup>

The process of implementing an international treaty involves several stages, two of which are signing and ratification. Signing is the initial stage, where state representatives sign the treaty's text as a sign of agreement to its contents. Ratification is the next stage, where the state formally declares its agreement to be bound by the treaty and implements its obligations. It is important to note that not all international agreements require a ratification process. Some treaties can be enforced through simpler processes, such as accession or acceptance. International law and the national laws of each country govern the mechanism for implementing international treaties. This process aims to ensure that the

<sup>26</sup> Basis And Kinds Of Assistance In MLA Law.

<sup>27</sup> Erica Febrianti, Josina Augustina Yvonne Wattimena, and Dyah Ridhul Airin Daties, "Pengaturan Mutual Legal Assistance Dalam Hukum Internasional (Kasus Konfederasi Swiss-Indonesia)," *TATOHI: Jurnal Ilmu Hukum* 3, no. 2 (2023): 116, <https://doi.org/10.47268/tatohi.v3i2.1556>.

<sup>28</sup> Nasir Sultan and Norazida Mohamed, "The Role of Information Sharing in Combating Money Laundering: The Importance and Challenges of Mutual Legal Assistance for Developing Jurisdictions like Pakistan," *Journal of Money Laundering Control* 26, no. 6 (2023): 1250, <https://doi.org/10.1108/JMLC-09-2022-0128>.



countries involved in the international treaty understand and agree to its contents and commit to implementing its obligations.<sup>29</sup>

Although the authorities play an important role in the MLA process, the handling of the case of kidney sales between Indonesia and Cambodia is considered ineffective. The Indonesian Embassy in Cambodia has only sent a diplomatic note until now, demonstrating the slow resolution of the case.<sup>30</sup> The absence of a suspect further exacerbates this lack of clarity. This inefficiency is indeed concerning, as it reveals weaknesses in the law enforcement process, particularly in the area of MLA. This could undermine public confidence in the justice system and hamper efforts to eradicate illegal organ trafficking. We need concrete steps and stronger coordination between the relevant authorities in both countries to accelerate the resolution of this case. Naming suspects and investigating the syndicate network should be a top priority to provide justice for the victims and prevent similar cases from occurring in the future.

Particularly in Indonesia, victims of kidney trafficking find themselves vulnerable and unable to defend themselves. Lack of coordination between agencies and weak law enforcement make the perpetrators and syndicates of organ trafficking operate more freely. Victim protection in the criminal justice process is certainly inseparable from victim protection, according to applicable positive legal provisions.<sup>31</sup> In the context of MLA implementation in Indonesia, there is basically no legal norm that operationally regulates MLA implementation procedures, both with regard to MLA with foreign parties and MLA proposed by Indonesia to foreign countries. Law No. 1 Year 2006 on Mutual Assistance in Criminal Matters and Law No. 15 Year 2008 on the Ratification of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters do not regulate the implementation of MLA. This condition causes law enforcers to have different perspectives on interpreting and implementing this provision, particularly in relation to criminal fugitives who flee abroad. On the other hand, the influence of non-juridical elements in the implementation of MLAT 2004, such as economic, political, and social factors, is also difficult to avoid. In fact, the signatory members of MLAT 2004, as a form of international (regional) agreement, must obey or implement it as if it were a hard law. The existence of MLAT 2004 can overcome the absence of an extradition treaty, particularly in the context of Indonesia and Singapore.

<sup>29</sup> M.Hum. Dr. Kholis Roisah, SH., *Hukum Perjanjian Internasional : Teori Dan Praktik* (Malang: Setara Press, 2015).

<sup>30</sup> Bagus Santosa Fika Nurul Ulya, "Kasus Jual Beli Ginjal, Kemenlu Kirim Nota Diplomatik Ke Kamboja," Kompas.com, 2023, [https://nasional.kompas.com/read/2023/08/01/18440041/kasus-jual-beli-ginjal-kemenlu-kirim-nota-diplomatik-ke-kamboja#google\\_vignette](https://nasional.kompas.com/read/2023/08/01/18440041/kasus-jual-beli-ginjal-kemenlu-kirim-nota-diplomatik-ke-kamboja#google_vignette).

<sup>31</sup> Rini Irianti Sundary and Umi Muslikhah, "State Responsibility in Protecting Indonesian Migrant Workers as Fulfillment of Human Rights Jurnal Ius Constituendum," *IUS CONSTITUENDUM* 1, no. 18 (2024): 432, <https://doi.org/10.26623/jic.v9i3.9183>.

At least, with MLAT 2004, there are no more obstacles to the implementation of legal cooperation between the two countries.<sup>32</sup>

The factual condition of varying criminal law systems among several ASEAN countries, leading to inaction in the investigation of criminal offenses, motivates the establishment of MLA. The legal systems of countries that adhere to the criminal justice system and due process model differ from those that adhere to the crime control model. The Due Process Model is a legal system that emphasizes the protection of human rights of crime suspects, resulting in a long bureaucracy in criminal justice. Meanwhile, the Crime Control Model emphasizes the effectiveness and efficiency of criminal justice based on the presumption of innocence. On the other hand, the legal system is also based on the term dual criminality. Diplomatic constraints significantly hinder the management of transnational crimes, primarily due to their impact on a country's sovereignty, which demands constant respect.<sup>33</sup>

So far, law enforcement efforts to eradicate conventional criminal offenses have faced many challenges. To achieve this goal, it is necessary to establish a specialized body that has broad authority, is independent, and is free from any power to combat the criminal offense of human organ trafficking. We should conduct this law enforcement process in the most effective, intensive, professional, and sustainable manner possible. Law enforcement, including human rights law, is essentially an effort to create, maintain, and sustain harmony in society through the incorporation of strong principles and resistance to those principles. Positive law, as defined by Austin in "Command of the Sovereign," has established itself as a clear, standardized standard in national legislation.<sup>34</sup>

Agreements on Mutual Legal Assistance between Indonesia and other countries to prevent criminal offenses will be effective in preventing and eradicating human organ trafficking. The governments of Indonesia and partner countries must consistently adhere to and implement the ratified bilateral agreements to achieve this goal. Cooperation in other legal areas, such as extradition treaties, should also support the implementation of these agreements. In the context of the judicial process, coordination between agencies and the provision of adequate facilities and infrastructure are also important factors in the judicial process.

#### 4. CONCLUSION

Based on the research results, we can conclude that the implementation of the agreement on mutual assistance in criminal matters in the case of the kidney sale from Indonesia to

<sup>32</sup> Hanafi Amrani and Mahrus Ali, "A New Criminal Jurisdiction to Combat Cross-Border Money Laundering," *Journal of Money Laundering Control* 25, no. 3 (2022): 547, <https://doi.org/10.1108/JMLC-06-2021-0059>.

<sup>33</sup> Rendi Prayuda et al., "Toward Effective of Asean Mutual Legal Assistance in Combating Non-Traditional Security Threat in Southeast Asia Region," *Relacoes Internacionais No Mundo Atual* 4, no. 42 (2023): 187, <https://doi.org/10.21902/Revrima.v4i42.5983>.

<sup>34</sup> Rahmat Muhajir Nugroho, *Paradigma Keadilan Substantif Dalam Perumusan Norma Baru*, ed. Alviana C, 1st ed. (CV. Global Press, 2018).

Cambodia encountered obstacles and was considered ineffective. There are concerns about ineffectiveness in handling this case, as evidenced by the slow pace of resolution. The Indonesian Embassy in Cambodia has sent only a diplomatic note to date and has not named any suspect. This inefficiency illustrates weaknesses in the law enforcement process, especially within the Mutual Legal Assistance (MLA) framework. This situation could undermine public trust in the justice system and hamper efforts to eradicate illegal organ trafficking. Therefore, authorities in both countries need to take concrete steps and strengthen their coordination to expedite the resolution of this case. Naming suspects and investigating the syndicate network should be a top priority to provide justice for the victims and prevent similar cases from occurring in the future. Moreover, the disparities in legal systems among ASEAN nations, such as the distinctions between the Due Process Model and the Crime Control Model, along with diplomatic limitations, contribute to the lack of action in addressing transnational crimes. All parties must continue to respect state sovereignty while endeavoring to improve efficiency and effectiveness in cross-border law enforcement.

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