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# Effectiveness of MLAT in Investigating Indonesian Kidney Sale Crimes to Cambodia

## Abstract

This paper addresses the pressing issue of human trafficking in the ASEAN region, focusing on the role of the Mutual Legal Assistance Treaty (MLA) as a legal strategy for regional collaboration. Human trafficking is not only a grave violation of human rights, but also a complex transnational crime that requires coordinated international efforts. This study investigates the existing legal framework, policies, and institutional mechanisms in ASEAN to combat human trafficking. The study identified significant challenges faced by MLA, including limitations in the legal framework and coordination issues among member states. The findings suggest that strengthening MLA as an integrated legal approach that encompasses prevention, prosecution, protection, and cross-border cooperation is hampered because corruption and complicity of officials in trafficking crimes at various levels of government continue to be significant problems, which impede law enforcement and perpetuate impunity to effectively combat trafficking. The study uses comparative legal analysis to highlight the importance of strong regional collaboration, emphasising the need for improved information sharing and coordination to enhance legal and institutional responses. The paper concludes that a stronger MLA framework is essential to address the complexities of trafficking and provide better support for victims.

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

## 1. INTRODUCTION

This research will discuss the application of Mutual Legal Assistance (MLA) in law enforcement against human organ trafficking in the ASEAN region. Mutual Legal Assistance (MLA), a form of bilateral and multilateral cooperation, facilitates the exchange of information and evidence to support the law enforcement process in criminal cases involving two or more countries, particularly when the perpetrator and evidence of the crime are located in a different country. Kidney transplants are the most common type, followed by liver transplants and heart transplants.<sup>1</sup>

The case of Polda Metro Jaya, which successfully arrested 12 suspects of trafficking in persons (TPPO) on July 28, 2023, involves the sale of kidneys from Indonesia to Cambodia. Twelve suspects were involved in this case: nine were from the domestic syndicate, responsible for recruiting, accommodating, and maintaining the victim's journey; one suspect acted as a liaison between the victim and the hospital in Cambodia; and two additional suspects were from the Police and Immigration departments. However, Miss Huang, a suspected perpetrator from Cambodia, led the 12 suspects and is currently on the run.<sup>2</sup>

In addition to Cambodia, this syndicate is targeting several other countries for kidney donors, offering a price of IDR 200 million. The practice of TPPO with the aim of selling kidneys has also come to the attention of the international community. In relation to this

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<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> ICJR, "Kasus TPPO Penjualan Ginjal Di Kamboja: Perlu Peran Aktif Jaksa Sedari Awal Untuk Memastikan Penyidikan Kasus Tuntas Sampai Pelaku Intelektual Dan Hak Korban Diakomodir," Institute for Criminal Justice Reform, 2023, <https://icjr.or.id/kasus-tpo-penjualan-ginjal-di-kamboja-perlu-peran-aktif-jaksa-sedari-awal-untuk-memastikan-penyidikan-kasus-tuntas-sampai-pelaku-intelektual-dan-hak-korban-diakomodir/>.

case, the United States Government, in its official report, cited reports indicating that Cambodian and Indonesian police are investigating allegations of illegal organ trafficking by human traffickers at a military hospital in Phnom Penh, known as Preah Keto Mealea Hospital. Traffickers have reportedly sent 122 Indonesian nationals there to have their kidneys removed and sold. The victims were offered \$9,000. Indonesian police arrested 12 people in the case, including three in Cambodia.<sup>3</sup> In addition, the International Organization for Migration (IOM) reported that a victim was given a good job opportunity by a friend. But he could not speak English, making it difficult for him to reach his targets at work. "They kept reducing my salary when I couldn't reach my targets, she said. "When I asked how I could go home, they said I had to pay back 200 million rupiah (about USD 13,400)." They even said they would sell me to an organ harvesting syndicate.<sup>4</sup>

The high demand for organs and the shortage of donors have led to the rampant trade in organs as merchandise. Recently, it was reported that a kidney was sold at a fantastic price. Despite the high price, many people are willing to buy the organ to fulfill their medical needs. Buying a kidney is easier than having to wait a long time for a donor. The high market price of kidneys has attracted the attention of many unscrupulous people, engaging in the illegal, dark business of selling kidneys. The illegal act of kidney buying and selling violates the law and deprives a person of their right to life.<sup>5</sup>

Mutual Legal Assistance (MLA) agreements are important for law enforcement to find and stop Indonesia-Cambodia trafficking networks as they provide a legal way for countries to assist each other in various parts of criminal cases. In addition, to help combat TPPO in Southeast Asia, ASEAN has formalized the ASEAN Convention against Trafficking in Persons (ACTIP). ASEAN also approved the MLA Agreement, which stands for "mutual legal assistance." Both Indonesia and Cambodia approved the international agreement at the ASEAN level. The MLA Treaty, which stands for Mutual Legal Assistance in Criminal Matters, is one way ASEAN enables countries in the region to work together. The MLA Agreement was signed in Kuala Lumpur, Malaysia, in 2004 to enable ASEAN countries to cooperate in mutual legal assistance. The 5th ASEAN Summit (AMMTC) in Hanoi, Vietnam, also agreed to the treaty.<sup>6</sup>

In his research, Gemy (2019) stated that ASEAN-MLAT state parties must provide various forms of legal aid as outlined in Article 1(2) of the agreement. This includes gathering evidence and obtaining voluntary statements from individuals; arranging for individuals to give proof or assist in criminal matters; presenting judicial documents; conducting searches and seizures; inspecting objects and locations; providing originals or

<sup>3</sup> United States Department of State, *Cambodia 2023 Human Rights Report*, 2023.

<sup>4</sup> Credit Christophe Archambault, "Tom ' S Regional Situation Report on Trafficking in Persons Into Forced Criminality in Online Scamming Centres in Southeast Asia," *IOM* 2, no. 3 (2024): 6.

<sup>5</sup> Ady Bintoro, "MEMAHAMI NILAI ETIKA DAN MORAL DONASI ORGAN," *Orientasi Baru* 25, no. 1 (2018): 94.

<sup>6</sup> Indira Devitasari, "Kekuatan Mengikat Asean Mutual Legal Assistance Treaty (Amlat) Bagi Negara Anggota Asean Dalam Rangka Penegakan Hukum Kejatan Transnasional," *Belli Ac Pacis* 1, no. 1 (2020): 25, <https://doi.org/https://doi.org/10.20961/belli.v1i1.27362>.

certified copies of relevant documents, records, and evidence; identifying or tracing property derived from criminal activity; restraining property transactions or freezing property derived from criminal activity that may be recovered, forfeited, or seized; recovering, forfeiting, or seizing property derived from criminal activity; and locating and identifying witnesses and suspects. However, this research only examines the flow of requests for mutual assistance.<sup>7</sup>

Saputra (2021), in his research, said that the limited stock of kidneys has the potential to encourage illegal organ sales.<sup>8</sup> Poor people in one country can sell their organs to rich people in another. The practice of selling organs for economic reasons remains illegal and unethical. The sale of human organs violates human values and rights, denying a person's right to life and integrity.

In her article, Dildora (2022) states that if a country wants the FRG to cooperate with other countries in criminal cases, it must first send a request to the Ministry of Foreign Affairs. Once the Ministry instructs the Federal Justice Office to carry out the request, the office will forward it to the Federal State Ministry of Justice, which is determined by the state to which they belong. Prosecutors' offices and courts will initiate the appropriate steps when they receive a request for international cooperation in criminal cases from the Ministry of Justice. Once the requesting country decides to accept or not, this mechanism will make it easier for countries to cooperate.<sup>9</sup>

In his study, Prawira (2023) In addition to being signatory to international treaties, ASEAN member states have also signed several bilateral mutual legal assistance treaties (MLAs) with both regional and non-regional governments.<sup>10</sup>

The difference between this research and the previous studies mentioned above is that the above studies only explain the effectiveness of mutual legal assistance in terms of bureaucratic flow. However, these studies fail to account for the intricacy of procedures, complex inter-agency coordination, limited human resources, and information technology barriers that often pose significant obstacles. The focus of this research is to uncover the various obstacles that Indonesia and Cambodia face when implementing MLATS to combat human trafficking. Corruption and official complicity in trafficking crimes at

<sup>7</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>8</sup> Trini Handayani, "The Criminal Law's Functionalization Against The Trafficking Of Kidneys For Transplant Purpose," *Jurnal Pembaharuan Hukum* 3, no. 2 (2021): 427.

<sup>9</sup> Umarmkhanova 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>10</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>.

various levels of government persist as significant issues, hindering law enforcement and perpetuating impunity. Observers report that local government, law enforcement, and security forces collaborate with criminal networks to facilitate trafficking crimes.<sup>11</sup> Consequently, the cooperation between Cambodia and Indonesia through MLAT did not proceed smoothly. Efforts to tackle human trafficking are also hampered by the suspected involvement of Cambodian officials in human trafficking; this can be seen from the location of the kidney transplant process carried out at Preah Ket Mealea Hospital. According to the Director of Criminal Investigation of Polda Metro Jaya Kombes Pol Hengki Haryadi, the hospital is a military hospital and is located in Phnom Penh, the capital of Cambodia.<sup>12</sup>

## 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>13</sup>

## 3. RESULTS AND DISCUSSION

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

ASEAN has ratified the ASEAN Convention against Trafficking in Person, hereafter referred to as ACTIP. ASEAN has also ratified the MLA-Treaty, also known as the mutual legal assistance agreement, which Indonesia and Cambodia have ratified at the ASEAN level. Mutual Legal Assistance in Criminal Matters (MLA Treaty) is one of the forms of international cooperation at the regional level ratified by ASEAN. In 2004, Kuala Lumpur, Malaysia, approved the MLA Treaty to initiate cooperation in the field of mutual legal assistance among ASEAN countries. The 5th ASEAN Summit (AMMTC) in Hanoi, Vietnam also approved it.<sup>14</sup>

Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, and Viet Nam first signed the Treaty on Mutual Legal Assistance in Criminal Matters (Among Like-Minded ASEAN Member Countries) (MLAT) at the Attorneys

<sup>11</sup> US Embassy, "2023 Trafficking in Persons Report: Cambodia," US Embassy in Cambodia, 2023, <https://www.state.gov/reports/2023-trafficking-in-persons-report/cambodia/>.

<sup>12</sup> Polda Lampung, "Lokasi Transplantasi Ginjal Kasus TPPO Di Kamboja Adalah RS Militer," Tribrata Polda Lampung, 2024, <https://tribrataneews.lampung.polri.go.id/index.php/detail-post/lokasi-transplantasi-ginjal-kasus-tpo-di-kamboja-adalah-rs-militer>.

<sup>13</sup> Muhaimin, *Metode Penelitian Hukum*, ed. Fatia Hijriyanti, 1st ed. (NTB: Mataram University Press, 2020).

<sup>14</sup> Indira Devitasari, "Kekuatan Mengikat Asean Mutual Legal Assistance Treaty (Amlat) Bagi Negara Anggota Asean Dalam Rangka Penegakan Hukum Kejatan Transnasional."

General meeting in Kuala Lumpur on 29 November 2004. Meanwhile, after completing their domestic requirements, Thailand and Myanmar subsequently signed the treaty on 17 January 2006. Specifically, Indonesia has ratified the MLAT through Law No. 15 of 2008 on the Ratification of the Treaty on Mutual Legal Assistance in Criminal Matters, Law No. 1 of 2006 on Mutual Assistance in Criminal Matters, Law No. 15 of 2008 on the Ratification of the Treaty on Mutual Legal Assistance in Criminal Matters, Law No. 1 of 2006 on Mutual Assistance in Criminal Matters, and Law No. 1 of 2006 on Mutual Assistance in Criminal Matters. 5 of 2009 on the Ratification of the United Nations Convention Against Transnational Organised Crime, Law No. 5 of 2009 on the Ratification of the Asean Convention Against Trafficking in Persons, Especially Women and Children, and Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons.

The ASEAN Declaration on Transnational Crime is the first ASEAN declaration of cooperation to address transnational crime. In 1997, the ASEAN Home Affairs Ministers' meeting in Manila agreed on the declaration. It also marked the establishment of the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) forum. The AMMTC, the highest coordinating body for ASEAN cooperation on transnational crime issues, including the Senior Official Meeting on Transnational Crime (SOMTC), is responsible for policy-making in the ASEAN region. The AMMTC shifted from meeting every two years to once a year in 2016 in response to the growing threat of transnational crime. ASEAN countries signed the New Kuala Lumpur Declaration on Combating Transnational Crime this year. During this meeting, members agreed to include three additional crime categories: illegal wildlife trade, illegal timber trade, and human smuggling. Previously, eight types of transnational crimes had been recognized, namely: traditional territories, drug trafficking, terrorism, economic crime, human trafficking, money laundering, piracy, arms smuggling, and cybercrime.<sup>15</sup>

Since then, the AAMTC has become a discussion forum for ASEAN ministers to meet in the fight against transnational crime, which will continue in the future. The complex social realities and practices of human trafficking require more specialized and regionally specific efforts to formulate laws and policies. Thus, the law will be effective in combating human trafficking. Crime undergoes transformation in line with the progress of human civilization. Crime continues to evolve in terms of perpetrators, modus operandi, and impact. Traditional crimes have evolved to incorporate advanced technology. Crime has transitioned from being committed by individuals to being masterminded by organized organizations or syndicates with global networks.<sup>16</sup> Mutual Legal Assistance (MLA) is a

<sup>15</sup> Muhammad Ikhyia Apriansyah, Maria Maya Lestari, and Evi Deliana, "Efektivitas Asean Treaty On Mutual Legal Assistance ( Amlat ) Dalam Menghadapi Kejahatan Transnasional Di Negara Indonesia," *Pro Justitia* 5, no. 1 (2024): 50–61, <https://doi.org/https://doi.org/10.57084/jpj.v5i1.1483>.

<sup>16</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>.



8 formal mechanism whereby one state can request assistance from another state in the investigation, prosecution, and trial of criminal matters.<sup>17</sup>

35 In Indonesia itself, there is a legal umbrella 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 in making mutual assistance agreements in criminal matters with foreign countries.<sup>18</sup> Article 3 paragraph (1) defines mutual assistance in criminal matters as a request for assistance to conduct investigation, prosecution, and examination of cases in court, all of which are in accordance with the legislation of the requested country. 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 information 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, return monetary fines in respect of criminal offences, prohibit wealth transactions, freeze assets that may be released or confiscated, or that may be required to satisfy fines imposed, in respect of criminal offences, search 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 Act.<sup>19</sup>

2 Law No. 1, Year 2006, contains several principles, among others:

a) The principle of specificity, which stipulates that assistance is provided in accordance with the specific request submitted, does not include help related to the extradition of criminal offenders, as outlined in Article 3 and Article 4;

1 b) The principle of reciprocity, which is based on the good relations between the two countries, is articulated in Article 5, paragraph (2);

c) Ne bis in idem principle. Article 6(b) of Idem articulates a prevalent principle in criminal law, which states that an individual cannot face prosecution or punishment twice for the same criminal offence;

1 d) The principle of double criminality, or double crime, Article 6 letter c, means that the act committed by the perpetrator must be a criminal offence for both countries;

e) The principle of non-racism Article 6 letter c: The requested state may refuse a request for assistance when it concerns crimes based on race, ethnicity, gender, religion, nationality, or political opinion;

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<sup>17</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>.

<sup>18</sup> "Pasal 2 Undang-Undang No 1 Tahun 2006 Tentang Bantuan Timbal Balik Dalam Masalah Pidana," Pub. L. No. 1 (2006).

<sup>19</sup> "Pasal 3 Undang-Undang No 1 Tahun 2006 Tentang Bantuan Timbal Balik Dalam Masalah Pidana," Pub. L. No. 1 (2006).

1 f) According to the principle of sovereignty in Article 6 letter e, the requested state may refuse if the approval of the provision of assistance on the request for assistance will harm national sovereignty, security, interests, and laws;

1 g) Under the principle of non-application of the death penalty, the requested state may refuse assistance if the offence committed carries the death penalty;

h) The Diplomatic Principle, which includes limited immunity in Article 17, means that this agreement is not only based on the principle of reciprocity but is implemented through diplomatic relations where diplomatic rights are also attached. This includes notification of refusal to provide assistance;

2 i) Refusing assistance due to criminal offences can occur for various reasons, such as political crimes (excluding the assassination or attempted assassination of a head of state or head of government), terrorism, or violations of military law.

44 Nothing in this law authorizes the extradition, surrender, arrest, detention, transfer of prisoners, or transfer of cases. This law outlines in detail the process by which the Government of the Republic of Indonesia can request mutual assistance in criminal matters from the Requested State, and vice versa. It also outlines the requirements for making such requests, locating or identifying individuals, assisting in the collection of evidence, and assisting in determining the whereabouts of individuals.<sup>20</sup>

55 According to Article 1(a), this law does not authorize extradition. As a result, this law has no 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 charged with a criminal offence outside the territory of the surrendering state and within the jurisdiction of the requesting state, which is authorised to extradite or surrender the person to the requesting state".<sup>21</sup>

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Based on 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 in Criminal Matters includes bilateral, regional, and multilateral cooperation in terms of prevention, investigation, prosecution, and handling of criminal cases. Mutual Legal Assistance cooperation includes the taking of evidence and statements of a person, the execution of seizure warrants, 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 give

20 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>.

21 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>.

testimony or assist in investigations in the requesting country in due observance of applicable laws and regulations.<sup>22</sup>

MLA agreements incorporate the principle of reciprocity, which mandates that the foreign state must first demonstrate equality before granting equal treatment. On the other hand, retaliation starts with equality but stops if the foreign state in question then demonstrates unequal treatment. So there is a difference in the starting time between these two definitions. International treaties use the principle of reciprocity, which allows for retaliation from one state against another. The principle of reciprocity binds the parties to a treaty, establishing equal rights and obligations as the cornerstone of a mutually desirable agreement.<sup>23</sup>

However, the author outlines some challenges in applying MLA in cases involving political offences and the principle of reciprocity. Some countries, such as civil law or common law, have different legal systems, making it impossible to apply MLAT everywhere. Additionally, the legal systems of ASEAN countries are not uniform. The crime control model (CCM) and due process model (DMM) are two examples of these differences. The CCM chooses to save time by using the presumption of innocence, which is different from other systems. However, the DPM is more concerned with the human rights of the suspect. As a result, dealing with crimes is often complicated and time-consuming, as each country requesting assistance faces the problem of wanting to use its own legal system.<sup>24</sup>

Another problem is that each country uses different words to describe crime. Each country has a different idea of what a crime is and how to define it. Read article 3 of the MLAT, which primarily discusses the principle of dual criminality in terms of limitations, to aid the MLA. Each country has its own way of understanding what a crime is, which is related to the principle of dual criminality. Requests for Mutual Assistance demonstrate this principle in action by showing that a crime in the requested state does not necessarily lead to a felony. A different interpretation or grouping of crimes, which aids the requesting state in denying the request for assistance, reflects the reality of a different crime. The state in which the request is made considers it a crime.

Mutual Legal Assistance is one of the best legal tools, as it helps the requesting country fight corruption more effectively. In reality, political, economic, and other factors often hinder the use of MLATs. MLA refusals are covered by the legal system differences

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<sup>22</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>23</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>24</sup> Fatika Azzahra Ainiyyah Hartono et al., "Peran Mutual Legal Assistance Dalam Pemberantasan Tindak Pidana Korupsi Di Negara-Negara ASEAN: Perspektif Tantangan Kedepan," *Jurnal Anti Korupsi* 13, no. 1 (2023): 28, <https://doi.org/10.19184/jak.v13i1.38815>.



discussed in point A and the political influence provisions in UNCAC 2003 and AMLAT. If the request for assistance relates to political crimes, the requested party may refuse it. This is why a refusal by the requested state makes sense; it is up to the requested state to decide whether the request for assistance is considered legitimate.<sup>25</sup>

Mutual Legal Assistance ASEAN (MLAT ASEAN), In criminal matters, the practice of international cooperation generally uses the instruments of extradition or mutual legal assistance (MLA). The national police forces of each country may 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 outside their jurisdiction. Interpol, an international police organization, assists countries in finding relevant facts to support reciprocal investigations related to the return of state assets. Romli Atmasasmita argues that these two legal instruments are forms of international cooperation commonly used in the prevention and eradication of transnational crime.<sup>26</sup>

In the absence of a prior extradition treaty, the requesting country may submit an arrest request through Interpol. Interpol issues the arrest request by sending a Red Notice and Diffusion to the ICPO-Interpol General Secretariat, which then forwards it to the National Central Bureau in the offender's country. The ICPO-Interpol General Secretariat directly disseminates a Notification, while the National Central Bureau (NCB) in the relevant Interpol member country issues a Diffusion.<sup>27</sup>

One example of Mutual Legal Assistance in Criminal Matters in the ASEAN region is the arrest of an Indonesian fugitive involved in a corruption offence who fled to Singapore. Article 3 paragraph (1) of Law No. 1 Year 2006 says that Mutual Legal Assistance in Criminal Matters, or "Assistance," is a request for help with investigating, prosecuting, and appearing in court according to the laws and rules of the state making the request.

### 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 a cradle of human trafficking. The first factor is economic inequality, which leads to high levels of poverty. This lack of prosperity drives people in Southeast Asia to seek money to fulfill their and their families' needs. These impoverished people are involved in human trafficking, either knowingly or unknowingly. High levels of corruption also play a significant role in this situation.

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<sup>25</sup> Ainiyyah Hartono et al.

<sup>26</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>27</sup> Adimas Rakyandani Saksono, "Fungsi Dan Peran International Criminal Police Organization-Interpol Dalam Ekstradisi," *Kertha Negara: Journal Ilmu Hukum*, 2016, 3, <https://ojs.unud.ac.id/index.php/Kerthanegara/article/view/18887>.

Corruption can exacerbate poverty by unfairly draining people's resources. In Southeast Asia, geographical factors also play an important role in trafficking.<sup>28</sup>

ASEAN member states have different roles in human trafficking. Some countries are sources of trafficked persons, while others are destinations for trafficking victims. Four ASEAN countries, namely Laos, Cambodia, Thailand, and Indonesia, are the main contributors to human trafficking cases in the world, according to data from the International Organisation for Migration (IOM) taken from an article by Renaldi Afriansyah.<sup>29</sup>

Indonesia itself has ratified the agreement through Law No. 15/2008 on the Ratification of the Treaty on Mutual Legal Assistance in Criminal Matters. Based on the ASEAN MLAT Agreement, Indonesia and Cambodia have an international cooperation framework for MLA. This agreement requires the parties to implement MLA measures to the maximum extent possible while taking into account the national legislation of the requested country. The agreement covers various types of MLA commonly found in bilateral agreements, such as evidence collection, search, and seizure of assets. In other words, the parties commit to assisting each other in the investigation and law enforcement processes related to criminal offenses to the extent permitted by the national laws of each country. This agreement covers the various forms of legal assistance commonly provided within the framework of MLA, such as the taking of witness and expert testimony, the seizure and surrender of evidence, and the execution of searches and seizures.<sup>30</sup>

On 8 April 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) sets out a comprehensive framework for providing MLA and the different 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 crimes relating to criminal matters, including the proceeds of criminal offences. 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>31</sup>

This law relates to two aspects: first, it mandates the provision of legal assistance in criminal matters to all requesting countries, regardless of the absence of an agreement with

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<sup>28</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>.

<sup>29</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%0AUpanya>.

<sup>30</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>31</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>.

the Kingdom of Cambodia; and second, it mandates the request for legal assistance in criminal matters from all requesting countries, regardless of the absence of an agreement 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>32</sup>

This law establishes internal procedures for implementing mutual legal assistance requests. All criminal cases involving mutual legal assistance, including those under bilateral or multilateral treaties or conventions ratified by the Kingdom of Cambodia, must adhere to these procedures. However, other provisions provided for in treaties, conventions, or laws of the Kingdom of Cambodia shall continue to apply. This law will not preclude requests for mutual legal assistance in criminal matters or cooperation between the Kingdom of Cambodia and foreign countries through lawful means.<sup>33</sup>

In implementing mutual legal assistance cooperation agreements, the Indonesian government must comply with the national laws of the participating countries, both as a party requesting assistance and as a party receiving support. In addition, Indonesia's national interests must be in accordance with the 1945 Constitution of the Republic of Indonesia. In order for mutual legal assistance agreements between Indonesia and other countries to be effective, consistency between the Indonesian government and partner countries is very important. Both parties must comply and adhere to the ratified bilateral agreements. The mutual assistance process must follow the agreed-upon provisions in the agreement between the two countries. The central role of authorized agencies in facilitating the MLA process is undeniable. They include central authorities responsible for making and receiving MLA requests; authorised 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 MLA through the Central Authority or directly to the foreign counterpart.<sup>34</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 with its contents. The state formally declares its agreement to abide by the treaty and fulfill its obligations during the ratification stage. It is important to note that not all international treaties require a ratification process. Some

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<sup>32</sup> M Yanggolo, C J J Waha, and D J Paseki, "Implementasi Perlindungan Hukum Terhadap Korban Tindak Pidana Perdagangan Orang Di Kamboja," *Lex Administratum* 12, no. 4 (2024): 6, <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/55718%0Ahttps://ejournal.unsrat.ac.id/index.php/administratum/article/download/55718/46477>.

<sup>33</sup> Basis And Kinds Of Assistance In MLA Law.

<sup>34</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>.

treaties can be enforced through simpler processes, such as accession or acceptance. International law and the national laws of each country govern the mechanisms for implementing international treaties. This process aims to ensure that the countries involved in an international agreement understand, agree to its contents, and commit to implementing its obligations.<sup>35</sup>

19 Although the authorities play an important role in the MLA process, the handling of  
61 kidney sale cases between Indonesia and Cambodia has been ineffective. The article  
57 informed the author that, despite the case being over a year old, the Embassy of the  
Republic of Indonesia in Cambodia has only dispatched a diplomatic note, demonstrating  
the case's gradual resolution.<sup>36</sup> The absence of a suspect further intensifies this ambiguity.  
The author enquired with the Ministry of Law and Human Rights (Kemenkumham) about  
dispatching an MLA letter to Cambodia concerning this case but has yet to receive a  
response. This silence engenders numerous unanswered questions and heightens  
apprehensions regarding the efficacy of international collaboration in legal affairs. As the  
investigation progresses, there is optimism that authorities will ultimately disclose the  
requisite information to clarify the situation.

17 The alleged involvement of Cambodian government officials can be seen from  
efforts to deal with human trafficking, which are also hampered by the alleged involvement  
of Cambodian officials in human trafficking. This can be seen from the location of the  
kidney transplant process carried out at Preah Ket Mealea Hospital. According to the  
Director of Criminal Investigation of Polda Metro Jaya Kombes Pol Hengki Haryadi, the  
hospital is a military hospital and is located in Phnom Penh, the capital of Cambodia.<sup>37</sup>  
20 This inefficiency raises concerns as it exposes weaknesses in the law enforcement process,  
particularly in the MLA area. This could undermine public confidence in the justice system  
and hamper efforts to eradicate illegal organ trafficking. The 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 must be a top priority  
to provide justice for the victims and prevent similar cases from occurring in the future.

68 Particularly in Indonesia, victims of kidney trafficking are in a vulnerable position  
and unable to defend themselves. Organ traffickers and syndicates are able to operate more  
freely due to a lack of coordination between institutions and weak law enforcement. The  
46 protection of victims in the criminal justice process is certainly inseparable from the  
protection of victims, in accordance with the provisions of the applicable positive law.<sup>38</sup> In

<sup>35</sup> Kholis Roisah, *Hukum Perjanjian Internasional : Teori Dan Praktik* (Malang: Setara Press, 2015).

<sup>36</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>37</sup> Polda Lampung, "Lokasi Transplantasi Ginjal Kasus TPPO Di Kamboja Adalah RS Militer."

<sup>38</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>.

the context of MLA implementation in Indonesia, basically there is no legal norm that operationally regulates MLA implementation procedures, both related to MLA with foreign parties and MLA proposed by Indonesia to foreign parties. 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 leads law enforcers to interpret and implement the provision from different perspectives, particularly when dealing with 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 signatories of MLAT 2004, as a form of international (regional) agreement, must obey or implement it as if it were a rigid law. The existence of MLAT 2004 can overcome the absence of an extradition treaty, especially in the context of Indonesia and Singapore. At least, with the existence of MLAT 2004, there are no more obstacles in the implementation of legal cooperation between the two countries.<sup>39</sup>

The Mutual Legal Assistance (MLA) framework has shown ineffectiveness in the case of kidney organ sales from Indonesia to Cambodia. A major factor is the lack of collaboration between agencies, which is often a significant barrier. For example, the National Police, the Ministry of Foreign Affairs, and the Ministry of Health often work independently in handling TPPO cases in Indonesia. This approach leads to a lack of coordination and synergy, which in turn prolongs the duration of investigations. Secondly, an inadequate legal framework is also a significant problem.<sup>40</sup>

The establishment of MLA was motivated by the factual conditions of different criminal law systems in several ASEAN countries, which result in inaction in the investigation of criminal offences. The legal systems in countries that adhere to the criminal justice system and due process model differ from those that follow the crime control model. The Due Process Model is a legal system that prioritises the protection of criminal suspects' human rights, leading to a lengthy bureaucracy within the criminal justice system. Meanwhile, the Crime Control Model emphasizes the effectiveness and efficiency of criminal justice based on the assumption of innocence. On the other hand, the legal system is also based on the term dual criminality. Diplomatic constraints significantly hamper the handling of transnational crimes, especially due to their impact on a country's sovereignty, which demands constant respect for the sovereignty of the state.<sup>41</sup>

<sup>39</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>40</sup> Muchammad Eko Hidayat, "Challenges in Protecting Trafficking Victims' Rights in Indonesia," *Rechtside* 11, no. 2 (2023): 3, <https://doi.org/https://doi.org/10.21070/jihr.v12i2.1009>.

<sup>41</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>.



63 So far, law enforcement efforts to eradicate conventional criminal offenses have met many challenges. To achieve this goal, it is necessary to establish a special body that has broad authority, is independent, and is free from any power to eradicate the crime of human organ trafficking. This law enforcement process must be carried out 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 and standardised standard in national legislation.<sup>42</sup>

56 Transnational crimes, particularly organ trafficking, are highly complex and involve parties in many countries. This makes investigating and handling such cases extremely difficult without strong cooperation between countries. Strengthening Mutual Legal Assistance (MLA) is crucial in this context. Firstly, organ trafficking often involves organised and sophisticated criminal networks capable of circumventing the legal systems of different countries. Without strong international cooperation, it is difficult for law enforcement officials to track and apprehend perpetrators who often operate in more than one jurisdiction.<sup>43</sup>

20 19 MLA agreements can play an important role in addressing these challenges by providing a formal mechanism for the exchange of information, evidence, and other legal assistance between the countries involved. For example, in the case of the sale of kidney organs from Indonesia to Cambodia, MLA can assist in expediting the process of extradition of perpetrators, collecting evidence across borders, and providing support to victims. However, MLA agreements are often not sufficient to address all challenges. The lack of clear operational guidelines and differences in each country's legal system can slow down the process and reduce the effectiveness of cooperation.<sup>44</sup>

9 Additionally, technical challenges such as differences in evidence collection and presentation procedures, along with language and cultural barriers, can complicate the implementation of MLA. In some cases, countries may have different priorities in tackling transnational crime, which can lead to a lack of optimal coordination and cooperation. Therefore, while MLA agreements are an important step in combating transnational crimes such as organ trafficking, there needs to be additional efforts to improve law enforcement capacity, strengthen national legal frameworks, and develop more efficient and responsive cooperation mechanisms.

<sup>42</sup> Rahmat Muhajir Nugroho, *Paradigma Keadilan Substantif Dalam Perumusan Norma Baru*, ed. Alviana C, 1st ed. (CV. Global Press, 2018).

18 <sup>43</sup> Cahya Wulandari; Sonny Saptodjio Wicaksono, "Tindak Pidana Perdagangan Orang (Human Trafficking) Khususnya Terhadap Perempuan Dan Anak : Suatu Permasalahan Dan Penanganannya Di Kota Semarang," *Yustisia* 3, no. 3 (2014): 16, <https://doi.org/10.20961/yustisia.v3i3.29272>.

34 <sup>44</sup> Natalia Kristin et al., "Tinjauan Yuridis Tindak Pidana Perdagangan Organ Tubuh Manusia Untuk Transplantasi," *Bhirawa Law Journal* 3, no. 1 (2022): 61, <https://doi.org/10.26905/blj.v3i1.7984>.

Confronting the complexity of transnational crime requires a holistic and comprehensive approach. This involves not only MLA agreements but also increased public awareness, investment in technology and training, and the development of closer regional and global cooperation. Only in this way can we hope to effectively counter increasingly sophisticated and rapidly adapting criminal networks.<sup>45</sup>

The different legal systems between Indonesia and Cambodia also complicate the implementation of MLA. Indonesia's more formal and complex legal system often clashes with Cambodia's simpler legal system. For example, the legal process in Indonesia tends to take longer than Cambodia's faster and more efficient crime control model. This difference causes misalignment in the handling of transnational crime cases, including kidney organ sales. As a result, despite the MLA agreement, coordination between law enforcement agencies of both countries remains ineffective.<sup>46</sup>

To improve the effectiveness of MLA, several concrete steps are needed, including establishing a specialised law enforcement agency that focuses on organ trafficking as well as strengthening the legal framework to cover gaps in MLA procedures. Improved coordination between national and international law enforcement agencies through the establishment of regular communication forums is also crucial. In addition, the integration of other legal tools, such as extradition treaties, will facilitate the process of arresting and handing over criminals for trial in their home countries. We also need to increase public awareness through educational campaigns to better understand the dangers of organ trafficking and to encourage public participation in reporting such cases.<sup>47</sup>

#### 4. CONCLUSION

This research will discuss the application of Mutual Legal Assistance (MLA) in law enforcement against human organ trafficking in the ASEAN region. Mutual Legal Assistance (MLA) is a type of bilateral and multilateral cooperation that facilitates the exchange of information and evidence to support the law enforcement process in criminal cases that span two or more countries, particularly when the crime's perpetrator and evidence reside in a different country. The difference between this research and the previous studies mentioned above is that the above studies only explain the effectiveness of mutual legal assistance in terms of bureaucratic flow. However, they do not explain the complexity of procedures, complicated inter-agency coordination, limited human resources, and information technology barriers that often become obstacles.

<sup>45</sup> Roos Bugter Frederike Ambagtsheer, *The Organization of the Human Organ Trade: A Comparative Crime Script Analysis, Crime, Law and Social Change*, vol. 80 (Springer Netherlands, 2023), <https://doi.org/10.1007/s10611-022-10068-5>.

<sup>46</sup> Ahmet Maluku Fejzi Beqiri, Elda Maluku, "Human Organs Trafficking: Perspective from Criminal Matters, Business and Human Rights," *Research Gate* 6, no. 4 (2023): 298, <https://doi.org/10.2471/blt.06.039370.AK>.

<sup>47</sup> Frederike Ambagtsheer, *The Organization of the Human Organ Trade: A Comparative Crime Script Analysis*.

Establishing a specialised law enforcement agency that targets organ trafficking and strengthening the legal framework to address gaps in MLA procedures are among the concrete steps needed to improve the effectiveness of MLA. Improved coordination between national and international law enforcement agencies through the establishment of regular communication forums is also crucial. In addition, the integration of other legal tools, such as extradition treaties, will facilitate the process of arresting and handing over criminals for trial in their home countries.

One of the biggest challenges in this research was gaining access to the Mutual Legal Assistance (MLA) letters that the Indonesian Ministry of Law and Human Rights sent to Cambodia. This prevented us from conducting a full analysis of the MLA process and how well it works in organ trafficking cases. Without complete data, it is difficult to get a favorable picture of the issues and challenges that arise during MLA implementation. This research is also difficult to conduct because each country has its own laws and ways of doing things. Therefore, to understand and improve the MLA framework, further research is necessary, incorporating more comprehensive regional data and facilitating easier access to official documents. Increasing international cooperation and making policy changes that are more aligned with how transnational crime works should also be the focus of future research. A holistic approach, supported by robust data, is expected to improve the efficiency and fairness of investigations and law enforcement in organ trafficking cases.

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