INTERNATIONAL COOPERATION:
BUILDING TRUST, OVERCOMING DIFFERENCES

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I. INTRODUCTION

Distinguished Participants of the Sixth Regional Seminar on Good Governance for Southeast Asian Countries. It is our great pleasure to have this opportunity to speak at this seminar on behalf of KPK — the Corruption Eradication Commission of the Republic of Indonesia.

II. CORRUPTION IS A TRANSNATIONAL CRIME

- The main theme of this seminar is "International Cooperation: Mutual Legal Assistance and Extradition," which is directly related to our daily activities in combating corruption.
- As we all know, corruption is a global, ethical and legal issue. Countries are now facing growing cross-border chains of corrupt activities and the flow of proceeds of corruption between jurisdictions.
- Criminals and the proceeds of crime cross borders easily. Increasingly, there is a need for international cooperation to gather evidence, apprehend fugitives and to recover the proceeds of corruption.
- International cooperation, especially in the areas of mutual legal assistance, extradition and the recovery of proceeds of corruption, is, therefore, becoming more and more important.

III. INTERNATIONAL LEGAL COOPERATION

- Firstly, multilateral and bilateral treaties between countries still represent the most formal vehicles that can be used in international legal cooperation. Theses treaties should build trust and overcome differences in our legal systems.
- On the other hand, since it was adopted and entered into force, the United Nations Convention Against Corruption (UNCAC) has provided us with the primary international framework for cooperation.
- We are fully aware that many countries have well-established systems for international cooperation and have ratified UNCAC and the OECD Convention on the Bribery of Foreign Public Officials. Many countries have also made major investments in the infrastructure required to detect, investigate and confiscate the proceeds of crime.

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Despite important progress over the last years, international cooperation against corruption is still in an early, but promising, stage of development.

- We also understand that to obtain assistance and cooperation, law enforcement must still rely on the goodwill of foreign states, even in the presence of treaties and agreements. No matter how involved the treaties or agreements between two states are, mutual legal assistance is still a matter of asking another state for help.

IV. DIFFERENT LEGAL SYSTEMS

- One of the most challenging issues in conducting international legal cooperation is the different legal systems between countries.

- We should stress the importance of making the effort to learn about the legal traditions of the requested or requesting state.

- It is important to learn by understanding the legal systems within which the requested and requesting states are working. The domestic legislation of each state is instructive, and early efforts to understand these systems and their methods will pay dividends, not only with the case at hand but also for every case in the future.

- I believe we should speak with the central authorities. They are the national experts in the field of international assistance. By making use of their knowledge, trust and enhanced cooperation will follow.

- However, miscommunication and the problems it creates are founded in misunderstanding. The greater problem often is not the differences in legal systems but missunderstanding about those differences.

V. INFORMAL ARRANGEMENTS

- Based on the KPK's experiences, we learned that in some practical areas, informal agency-to-agency arrangements were considered as important complimentary measures.

- Arrangements were conducted through bilateral agency-to-agency or Interpol cooperation mechanisms, including cooperation between Financial Inteligence Units (FIUs).

- Agency-to-agency cooperation is very beneficial to obtain information from foreign counterparts to collect non-sensitive records or preliminary data.

- It is also useful as a bridging approach in dealing with formal legal cooperation (non-coercieve measures).

- In the case of mutual legal assistance, consideration should be given to whether current goals can be achieved through agency-to-agency cooperation or whether the documentation required is in the public domain of the requested state and is therefore something that does not require mutual legal assistance. Normally, the less coercive a request, the more likely it can be achieved without having to resort to a formal request which, no matter how efficient a system is in place, will take more time than an informal

request.

- Knowing when to initiate formal requests is just as important as knowing how to initiate them.

VI. KPK'S EXPERIENCES IN THE AREA OF INTERNATIONAL COOPERATION

- Let me share KPK's experiences in area of international cooperation. KPK via the Indonesia Central Authority has been conducting several MLAs (requesting and requested) with the USA, the UK, Japan, Singapore, Hong Kong, Malaysia, Brunei Darusallam, Australia, and others.

- KPK also has good working relationships with many foreign agencies, such as the FBI (USA), SFO (UK), ICAC (HK), MACC (Malaysia), CPIB (Singapore), etc. We are also actively involved in many anti-corruption forums, such as IAACA, G20 ACWG, APEC ACT, SEA-PAC, World Bank ACHN, etc.

- An example of one of our cases is the repatriation of MN, a high-profile Parliament Member of Indonesia. After about 6 months as a fugivite, he was arrested in Cartagena, Colombia on August 7, 2011. The operation was supported by approximately 15 jurisdictions in the form of formal and informal legal cooperation, including MLA. The operation was supported by INTERPOL as well as authorities and anti-corruption agency networks in Colombia, China, Cambodia, Hong Kong, Laos, Malaysia, Maldives, Singapore, the USA, Vietnam, Venezuela and others

- Another milestone for Indonesia in international cooperation is in the area of UNCAC implementation review. Indonesia completed its UNCAC implementation review on Chapters 3 and 4 in May 2012.

VII. CONCLUSION

1. To move forward in the implementation of international legal cooperation, we would suggest that the following steps be taken: 1. promote UNCAC, particularly the use of provisions related to extradition, MLA and asset recovery; 2. strengthen multilateral/bilateral treaties and agency-to-agency cooperation to gain better understandings; 3. enhance capacity building; 4. improved domestic cooperation (multi-agency teams).

2. To sum up, as crime and criminals continue to have less respect for international boundaries, effective international cooperation becomes more vital. Concurrently, those involved in practice will be required to become familiar with international legal practice, both theoretical and practical. Our criminal justice systems must continue to discover, collate, and absorb the rules, policies and practices of their partners in the international community. Without joint effort, our fight against crime will be less effective. Let us build trust and overcome differences

3. Ladies and gentlemen, thank you for your attention.

INTERNATIONAL COOPERATION IN THE REPUBLIC OF INDONESIA: MUTUAL LEGAL ASSISTANCE AND EXTRADITION

Abeh Intano[*]

I. INTRODUCTION

There are around 3 million citizens from the Republic of Indonesia who are living in foreign countries, and around 1 million people from the Republic of Indonesia travel regularly to foreign countries for various business purposes. Also there are around 46,000 foreign citizens living in Indonesia for various business purposes, and there are 750,000 tourists visiting Indonesia (based on 2011 statistics from the Center Statistic Bureau Indonesia). In this condition, the Government of the Republic of Indonesia believes that there is a possible situation related to the criminal aspect which could appear in trans-border activity by the citizens. Offences involving trans-border activity could be ordinary crimes or serious and organized crime.

Efforts to prevent and combat trans-border crime require cooperation and mutual support for the work of law enforcement authorities in all countries and/or jurisdictions; however, each law enforcement authority is limited in that they only work in their own jurisdictions and lack the capability to reach other jurisdictions based on principles of sovereignty.

In support of the law enforcement effort to prevent and combat trans-border offences, the broadest possible measures of cooperation need to be formulated. The government of the Republic of Indonesia supports all mechanisms of cooperation including:

- Informal cooperation between law enforcement agencies;
- Formal cooperation between governments.

All cooperation is designated to support the work of law enforcement throughout their investigation, prosecution, and execution of the judgment for the offence(s) which were conducted by the criminal offenders in foreign jurisdictions. In this regard, Indonesia needs to explore the international best practices in the implementation of formal cooperation through mutual legal assistance in criminal matters and extradition of fugitive offenders.

The government of the Republic Indonesia has enacted national legislation on mutual legal assistance and extradition. For mutual legal assistance, Indonesia has legislation which regulates the principles, guidance, and proceedings in handling mutual legal assistance in

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criminal matters through Indonesian Act Number 1 Year 2006 on Mutual Legal Assistance in Criminal Matters. For the extradition of fugitive offenders, Indonesia has legislation which regulates the principles, guidance, and proceedings in handling extradition through Indonesian Act Number 1 Year 1979 on Extradition.

In the Republic of Indonesia cooperation is required in the support of the law enforcement work to prevent and combat trans-border crime, which concerns obtaining evidence, proceeds of crime, and also the surrender the fugitive offenders, through mutual legal assistance and extradition, based on the following circumstances:

1. Evidence should be admissible for use by law enforcement and judicial authorities in the Requesting Countries' jurisdictions;

2. If there is a legitimate order from the judicial authority for obtaining evidence which is regulated under criminal procedure legislation;

3. Assurance of the protection of third parties (related to the proceeds of crime);

4. Ensuring due process of law for the surrender of fugitives (Human Rights aspect);

5. If there is consideration for conditions of reciprocity.

The Republic of Indonesia has become a Party to 3 (three) essential Conventions of the United Nations:

1. United Nations Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, which was ratified by Indonesia in 1997 by Act Number 7 Year 1997;

2. United Nations Convention against Corruption 2003, ratified by Indonesia in 2006 by Act Number 7 Year 2006;

3. United Nations Convention against Transnational Organized Crime 2000 (UNTOC), ratified by Indonesia in 2009 by Act Number 5 Year 2009.

As a party to these United Nations conventions, Indonesia applies them to combatting criminals, as well as other international principles and national law.

II. MUTUAL LEGAL ASSISTANCE

Indonesian Act Number 1 Year 2006 on Mutual Legal Assistance in Criminal Matters is specifically for assistance related to criminal investigations, prosecutions and examinations before the court in accordance with domestic laws and regulations of the Requested State. This means that assistance covered in this legislation is only related to assistance in criminal matters and does not include assistance related to civil or commercial matters. Provisions of Indonesian Act Number 1 Year 2006 on Mutual Legal Assistance in Criminal Matters do not apply to the extradition or surrender of any person, the arrest or detention of any person with a view to the extradition or surrender, the transfer of persons in custody to serve sentences, or the transfer of proceedings in criminal matters. Indonesian Act Number 1 Year 2006 on Mutual Legal Assistance in Criminal Matters stipulates Mandatory and Discretionary Grounds for Refusal of the Assistance as stated in Articles 6 and 7 of the Mutual Legal

Assistance Act 2006 (Statute of Limitation).

Mandatory grounds for refusal of mutual legal assistance as stipulated in Article 6 Indonesian Act Number 1 Year 2006 on Mutual Legal Assistance in Criminal Matters are:

1. if the request for Assistance relates to the investigation, prosecution or examination before the court or punishment of a person for the crime that is of a political nature, except a crime or attempted crime against the life or person of a Head of State/a Head of Central Government, or terrorism;

2. if the request for Assistance relates to the investigation, prosecution or examination before the court or punishment of a person for the crime under military law;

3. if the request for Assistance relates to the investigation, prosecution or examination before the court of a person for a crime, the perpetrator of which has been acquitted, awarded clemency, of has completed serving the criminal sanction;

4. if the request for Assistance relates to the investigation, prosecution or examination before the court of a person for a crime which, if committed in Indonesia, cannot be prosecuted;

5. if the request for Assistance is for prosecuting or bringing a person to justice based on a person's race, gender, religion, nationality, or political beliefs;

6. if an approval for providing the Assistance requested will be harmful to the sovereignty, security, interests, or national law;

7. if the foreign state cannot assure that the items requested will not be used for a matter other than the criminal matter in respect to which the request was made;

8. if the foreign state cannot assure that it will return, upon request, any item obtained pursuant to the request.

Discretionary grounds for refusal in mutual legal assistance as regulated in Article 7 Indonesian Act Number 1 Year 2006 on Mutual Legal Assistance in Criminal Matters are:

1. if the request for Assistance relates to the investigation, prosecution, and examination before the court or punishment of a person for a crime that, if said crime were committed within the territory of the Republic of Indonesia, is not a crime;

2. if the request for Assistance relates to the investigation, prosecution, and examination before the court or punishment of a person for a crime that, if said crime were committed outside the territory of the Republic of Indonesia, is not a crime;

3. if the request for Assistance relates to the investigation, prosecution and examination before the court or punishment of a person for a crime that is subject to capital punishment;

4. if an approval for providing Assistance upon said request will be harmful to the investigation, prosecution or examination before the court in Indonesia, endanger the

safety of the person, or burden the assets of the state.

In support of the work of assistance under Indonesian Act Number 1 Year 2006 on Mutual Legal Assistance in Criminal Matters and as mandated in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, the United Nations Convention against Corruption 2003, and the United Nations Convention against Transnational Organized Crime 2000 (UNTOC), the Republic of Indonesia has designated the Minister of Law and Human Rights of the Republic of Indonesia as the central authority for handling cooperation on mutual legal assistance. For the next stage, the Minister of Law and Human Rights of the Republic of Indonesia as the central authority established the central authority unit under the Ministry of Law and Human Rights, which is the Mutual Legal Assistance Section at the Directorate of International Law and Central Authority, and which handles all technical aspects in the mutual legal assistance role.

The main duties in the Mutual Legal Assistance Section at the Directorate of International Law and Central Authority are:

1. Analyzing the Information and Evidence in the Request Document for satisfaction of the requirements under the Indonesian MLA Act and Indonesian Criminal Procedure Code (before determining whether the request(s) could be granted or not);

2. Immediately consult or communicate with the Requesting Country if there are any additional documents or information needed to execute the request(s);

3. Designate the Competent Case Officer (who the authority in the Requesting Country can contact directly for gathering information on the process);

4. Consultation with Law Enforcement Authorities, which have authority to execute the assistance request;

5. Make sure that the evidence (or others) obtained is admissible under the law of the Requesting Country.

6. Drafting the Request Document(s), if Indonesia becomes a Requesting Country.

The type of assistance that could be given to foreign jurisdictions under Indonesian Act Number 1 Year 2006 on Mutual Legal Assistance in Criminal Matters are:

1. Identifying and locating persons;

2. Obtaining witness statements (written or other forms thereof);

3. Providing evidentiary documents (written or other forms thereof);

4. Making arrangements for persons to provide statements in the Requested Country or to assist in the investigation;

5. Service of Documents;

6. Providing assistance related to searches by production warrant and also for seizing the

evidence;

7. Forfeiture of the proceeds of crime;

8. Recovery of pecuniary penalties in respect to the crime;

9. The restraining of dealings in property, the freezing of property that may be recovered or confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect of the crime;

10. Locating property that may be recovered, or may be needed to satisfy pecuniary penalties imposed, in respect to the crime;

11. Other assistance in accordance with the Indonesian criminal procedure code.

Assistance request(s) also provide for using the UN Conventions to which Indonesia (and the Requesting Country) are parties. In this matter the Requesting Country does not necessary need to obtain the specific reciprocity assurance, and the Requesting Country should be a Party to the UN Conventions and should have ratified the conventions without taking Reservations in the chapters or articles on international cooperation (mutual legal assistance).

For assistance related to recovery of assets relating to the proceeds of crime through mutual legal assistance under Indonesian Act Number 1 Year 2006 on Mutual Legal Assistance in Criminal Matters, there are the following conditions:

1. Assistance requests shall be conviction based. However, at the present Indonesia is in the process of passing legislation which could implement a non-conviction-based-forfeiture regime;

2. Assets should be related to the crimes (including proceeds of crime and/or are instrumentalities of the crimes);

3. The Confiscation Order from the Court in the Requesting Country is needed;

4. Asset Sharing: not regulated in the Indonesian MLA Act 2006, if there are costs, these costs should be further discussed with the Requesting Country during the process (i.e. if the assets needed to be put into special retention entities).

III. EXTRADITION

In support of the work of assistance under Indonesian Act Number 1 Year 2006 on Mutual Legal Assistance in Criminal Matters and as mandated in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, the United Nations Convention against Corruption 2003, and the United Nations Convention against Transnational Organized Crime 2000 (UNTOC), the Republic of Indonesia has designated the Minister of Law and Human Rights of the Republic of Indonesia as the Central Authority for handling cooperation on extradition. For the next stage, the Minister of Law and Human Rights of the Republic of Indonesia as the central authority established the central authority unit under the Ministry of Law and Human Rights, which is the Extradition Section at the Directorate of International Law and Central Authority, and which handles all

technical aspects of extradition.

The important principles regarding the implementation of extradition by the government of the Republic of Indonesia are:

1. Extradition of the fugitive where the fugitive offenders are suspected criminal offenders and are needed for prosecution as well as where the fugitive offenders are convicted criminal offenders and are needed for enforcement of imprisonment upon the sentencing by the court;

2. Recognizing the extradition of the fugitive by the bilateral treaty, convention (to which Indonesia and the Requesting Country are parties), and also could be considered in the absence of treaty or conventions (based on the assurances of reciprocity);

3. There are mandatory requirements for submitting the extradition request through diplomatic channels (diffrent from mutual legal assistance that could be using direct channels from central authority to central authority);

4. Indonesia has discretion to extradite its own nationals. Extradition of Indonesian citizens could be granted if in view of the circumstances by the President of the Republic of Indonesia, it would be better if the person concerned be tried at the place of commission of the crime;

5. Mandatory principle on dual criminality of the conduct.

To support the work of cooperation through extradition, as of 2012 Indonesia has bilateral treaties with:

a. Malaysia (signed 7 January 1974) and has been ratified;

b. Philippines (signed 10 February 1976) and has been ratified;

c. Thailand (signed 29 June 1978) and has been ratified;

d. Australia (signed 22 April 1992) and has been ratified;

e. Hong Kong (signed 5 May 1997) and has been ratified;

f. Republic of Korea (signed 28 November 2000) and has been ratified;

g. Singapore (signed 27 April 2007) and not yet ratified, refer to the parliament schedule;

h. People’s Republic of China (signed 2 July 2009) and not yet ratified, refer to the parliament schedule;

i. India (signed 25 January 2011) and not yet ratified, refer to the parliament schedule;

j. United Arab Emirates (scheduled for signing);

k. Socialist Republic of Viet Nam (scheduled for signing).

There are mandatory principles on the limitation conditions to grant an extradition request under Indonesian Extradition Act Number 1 Year 1979:

1. Respect to political crime [Article 5];

2. There is a final judgement [Article 10];

3. Double Jeopardy [Article 11];

4. Lapse of Time [Article 12];

5. Reason to believe that prosecution or sentence is related to her/his religion, political opinion or nationality, or because of his certain race or group of the people [Article 14];

6. Will be surrendered to a third jurisdiction other than Requesting Countries [Article 16].

However, Indonesian Extradition Act Number 1 Year 1979 stipulates the discretion of refusal based on the following conditions:

1. Extradition for crimes under military criminal law, which are not crimes under ordinary criminal law – Discretion if it is decided otherwise in a treaty [Article 7];

2. Extradition Request to Indonesia for Indonesian Nationality – Discretion if considered that it will be better to prosecute the fugitive in the Requesting Country [Article 7];

3. The criminal conduct has been committed in whole or in part in the territory of the Republic of Indonesia [Article 8];

4. The person sought under criminal proceedings in Indonesia, discretion if the Requesting Country agreed for postponement [Article 9];

5. The criminal law underlying the request is related to the provision of the death penalty, discretion if the Requesting Country could obtain the assurance that death penalty will not be imposed against the person sought [Article 13];

6. Rule of Specialty assurance could not surrender by specific statement from the Requesting Country, discretion if the President of the Republic of Indonesia considers waiving the assurance of specialty from the Requesting Country [Article 15].

Under the extradition principles of Indonesia, for urgent circumstances and when the Requesting Country considers that there is a reason that the fugitive located in Indonesia could be a flight risk, it is possible to implement a Request for Provisional Arrest (PAR) before the Extradition Request is made within the applicable time period (20 days under Indonesia national law, or specific time under the treaty).

The requirements for Provisional Arrest are:

1. Requesting Country could make the Provisional Arrest Requst (PAR) in cases of urgency provided that the arrest is not contrary to the law of the Republic of Indonesia (i.e. urgency reason: there are reasonable grounds to believe that if the fugitive is not

immediately arrested, he/she will present a flight risk).

2. PAR is requested when the document of extradition is under preparation in the Requesting Country.

3. PAR is applicable to requests from treaty- and non-treaty-based countries with Indonesia.

4. *Dual criminality* principle is required in the criminal conduct which is made in the document of request for provisional arrest.

5. There is a time limit for the Requesting Country on submission of the document (original) through diplomatic channels (i.e. Indonesia and Australia for 45 days, but from non-treaty-based countries, it is 20 days). If the Requesting Country failed to fulfill the obligations on this matter, the person(s) should be released from custody.

6. PAR requests shall be sent by the competent authorities of the Requesting Country to the competent authorities in Indonesia (Head of Police of the Republic of Indonesia or the Attorney General of the Republic of Indonesia through INTERPOL Indonesia) through the diplomatic channels or also could be sent directly by post or telegraph.

7. Competent authorities in Indonesia will inform competent authorities of the Requesting Country of the decision to arrest the person under PAR.

8. If the extradition document was submitted at the time, the provisional arrest of the person in custody will be continued to the arrest for extradition.

9. Documents for extradition which were made previously by PAR at the first stage should fulfill the requirement (refer to the extradition act or the treaty). It is important for intensive communication and consultation before submission of the extradition request document to make sure the extradition document can be granted.

IV. SOME PROBLEMS CONCERNING MLA AND EXTRADITION

Indonesia has some problems with incoming or outgoing MLA and Extradition.

A. MLA

- **Format of request**. Sometimes requests do not come from the designated Central Authority of the state. We frequently receive letters rogatory, not requests for MLA.

- **Bank secrecy**. Under Law Number 10, 1998, Banks must protect the owner of the account unless the owner is sued as a suspect.

- **Differences of legal systems**. Indonesia sometimes has a problem with different legal systems from other counties. Mainly, how to fulfill the principles of dual criminality. Related to this problem is concerning **Interpretation of legal terminology.** The side effects of different legal systems are problems with investigation and prosecution.

B. EXTRADITION

In extradition, the problems are similar to MLA.

- **Format of Arrest Warrant**. Each country has a different format and different officials who issue (some countries by police, others by the courts)

- **Dual Criminality**.

- **Differences of legal terminology**.

V. SUGGESTIONS

To eliminate problems, we can consider:

a. The need to expedite and streamline MLA and Extradition and to provide each other easy access to up-to-date information, legislation and forms on MLA and Extradition;

b. Informal consultation and bilateral meetings between Central Authorities;

c. Building a regional cooperative network for efficient and effective MLA and Extradition.

VI. CONCLUSION

International legal cooperation among the countries should be promoted. **Indonesia supports** all efforts to combat transnational crime by legal instruments and is a party to some international conventions as well as bilateral treaties. Indonesia also supports **building networks** to combat transnational crime through formal and informal relationships.

ASSET RECOVERY AND MUTUAL LEGAL ASSISTANCE IN INDONESIA: THE PRESENT AND THE FUTURE

Chuck Suryosumpeno[*]

I. INTRODUCTION

The criminal offenders have the ability and capacity to commit crimes and place their crime-related assets in any jurisdiction they think fit. They use any loopholes in national law and legislation and exploit the inflexibility and incompatibility of the legal system for their own ends.

The Indonesian Government is fully aware of trans-national crime and therefore takes the view that there is no better solution to combat crime other than to cooperate with other states on the basis of good relations and respect for each others laws and legislation.

The objective of this paper is to provide knowledge regarding the general description on how asset recovery within the frame of MLA works in Indonesia.

II. SEARCH, SEIZURE AND FORFEITURE IN INDONESIA

Indonesia has various investigating authorities. For general crimes, the investigating authorities are divided into two groups. The first is the Indonesian National Police and the second is Civil Servant Investigators (PPNS) such as immigration, customs, tax and forestry. For specific crimes such as corruption cases, the investigators are the Indonesian National Police, the Prosecution Service and Corruption Eradication Commission (KPK). For human rights violations, the investigator is the Prosecution Service.

Despite various investigating authorities, prosecution is the authority of the Prosecution Service. For corruption cases the prosecution authority is executed by two agencies, i.e.: The prosecutors from the Prosecution Service and prosecutors assigned to the Corruption Eradication Commission (KPK).

In general, the criminal procedure for search, seizure and forfeiture is pursuant to Law no 8 of 1981 (KUHAP). When the case is still premature, i.e. in the intelligence data gathering and preliminary investigation stage, it is not yet "pro justitia" (for the sake of justice). At this point the use of force cannot be utilized by the law enforcement.

The persons of interest may provide information or data on a voluntary basis. Therefore the action of search and seizure is not an option. When the case is upgraded into the investigation stage, then investigators are authorized to compel the suspect, witness or any

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relevant parties to transfer the legal control over their assets to the investigating authorities since the investigation is now transformed into "pro justitia"

In order to carry out a search, investigators need a warrant and permission from a district court. When a circumstance compels the investigators to act swiftly they may carry out the search and later request approval from the court. The search can be a body search; clothing search; property search. Witnesses have to be present during the search of property and in case of the owner subjects search, the local neighborhood leaders have to be present to witness the search. A copy of the minutes of the search is made available to the owners.

Goods, articles, property or other assets are subject to seizure if they meet criteria sets out by the law. Those criteria are:

- Obtained from a crime or as proceeds of crime.
- Used as a tool of crime or tool to prepare the crime.
- Used to hinder the investigation of a crime.
- Made specifically to commit a crime.
- Other goods, articles, property or assets that have direct connection with the crime.

Assets seized under civil law or bankruptcy cases may be re-seized for the purpose of investigation, prosecution and trial of a criminal case as long as they meet any criteria as mentioned above.

III. MUTUAL LEGAL ASSISTANCE LAW IN INDONESIA

The legal basis for the Indonesian law enforcement to honour requests from foreign states for mutual legal assistance is Law Number 1 of 2006 regarding Mutual Legal Assistance on Criminal Matters. For the ASEAN region, Indonesia is the signatory of the Treaty of Mutual Legal Assistance in Criminal Matters, or better known as AMLAT, was signed in Kuala Lumpur, Malaysia on 29 November 2004. The treaty itself was ratified by the parliament and enforced by Law Number 19 of 2008 regarding the Ratification of the Treaty of Mutual Legal Assistance in Criminal Matters.

The areas covered by MLA are investigation, prosecution and court hearings in accordance with national laws and regulations. In relation to assets, several types of assistance that can be honoured are: the execution of requests for search and seizure; the recovery of pecuniary penalties related to the crime; the prohibition of asset transactions and the freeze of assets to satisfy the pecuniary penalties; and tracing assets.

Not all requests can be honoured. There are absolute and facultative grounds for refusal. The request is refused if the alleged crime which is the basis of the request is:

- A crime of political nature with the exception of attempted assassination of the head of a state of government;

- A crime that falls under the military laws;
- The offender has been acquitted, granted clemency, or is finishing serving the sentence;
- Non-prosecutable in Indonesia;
- Related to race, gender, religion, nationality or political views of the alleged offender;
- Detrimental to the national laws, sovereignty, security and interest.

The request placed by a requesting state may be refused on the ground that the alleged offence is:

- not a crime if committed in the Indonesian jurisdiction;
- Punishable by capital punishment;
- Detrimental to the Indonesian criminal procedure;
- Endangering the safety of persons if the request is honoured;
- Burdening the state finances if the request is honoured.

There are three optional avenues for a requesting state in making the request, either by the formal fashion or by the informal one. First, the requesting state with MLA agreement with Indonesia may place its request directly through the central authority to the central authority mechanism. The request is addressed to the Indonesian Ministry of Justice and Human Rights as the central authority. The ministry will then refer such a request to the relevant competent authority (the Attorney General or Chief of National Police) for a follow up. In the absence of such agreement, a request can be made through diplomatic channels. The Ministry of Foreign Affairs will refer such request to the Ministry of Justice and Human Rights, which in turn refers it to the competent authority.

Alternatively, a requesting state can make an informal request to the requested state through agency-to-agency channels. For example: Attorney General Office of any ASEAN country may be in direct contact with relevant unit within the Attorney General Office of the Republic of Indonesia to exchange information in regard to the case that MLA is sought. This procedure may speed up the process by avoiding unnecessary delays and unforeseen obstacles.

The request for assistance has to be accompanied by the court order or court permission by the requesting state. If search and seizure of assets are necessitated and a proper warrant has to be attached as well. On the basis of the warrant and other relevant documents from the requesting state the Attorney General or the Chief of the National Police will follow up by issuing the similar warrant in order to execute the request. In the event that the law enforcement must ask swiftly, they may execute a warrant without having to secure the court's permission in the first place. The execution of warrant in this nature is limited to assets that are movable. After the execution the in-charge official must immediately seek approval from the district court within its jurisdiction. At its discretion, the court may or may not approve

the action of the law enforcement official. For immovable assets permission by the district court must be sought before a warrant can be executed.

IV. THE FUTURE

In regard to the asset recovery, the Indonesia Criminal Procedure (KUHAP) adopts the principle of *in personam* jurisdiction, meaning that assets can be frozen, seized and forfeited only if such assets can be linked to a crime and the offenders, it is much harder for law enforcement officials to find a link between the assets and the offender. The *in personam* principle cannot satisfactorily address the difficulty of law enforcement. Therefore Indonesia is now preparing a new law (bill) regarding the asset recovery in which the *in rem* principle is adopted and will complement the *in personam* principle in KUHAP.

In the last two years (2011–2012) the Attorney General Office of the Republic of Indonesia has established and developed an Asset Recovery Task Force. During the two-year period this task forced recovered 1.2 trillion rupiahs from drug and corruption cases. The task force has already been internationally recognized because it is engaged with many international networks such as CARIN (Europol), ARINSA (South Africa), RRAG (South America).

This task force is an embryo of The Indonesian Asset Recovery Office and will become a permanent working unit under the direction of the Attorney General, which has the ability to handle asset recovery. We will take advantage of the existence of this unit to have mutual cooperation in combating trans-border crimes in which assets are involved.