

## RECONCEPTUALIZING THE ROLE OF POLICE DIPLOMACY IN HANDLING TRANSNATIONAL CRIME

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### Abstract

This study aims to examine diplomacy in law enforcement of transnational crimes. Transnational crime, or what is known as transnational crime causes a lot of losses for a country. This study wants to examine three problems, namely: (1) what is the form and role of diplomacy in law enforcement against transnational crimes in Indonesia? (2) What are the diplomatic arrangements in law enforcement against transnational crimes in Indonesia? (3) What are the obstacles and solutions in diplomacy in law enforcement carried out by Indonesia in dealing with transnational crimes?. The research method used is empirical juridical research (non-doctrinal). Research approach: statute approach; concept approach (conceptual approach), case approach (case approach), and comparative approach (comparative approach). The results of the study indicate that international criminal law is the law that determines what national criminal law will be applied to violations that are actually committed if they contain international elements. In addition, the international understanding of criminal law in terms of the scope of city criminal law, the definition of city criminal law that is determined internationally, in the sense of city criminal law which is general for civilized countries, in the sense of international cooperation in city criminal administration; justice An international crime is an act that is universally recognized as a crime which is considered a serious matter of international concern and for some lawful reason cannot be left in the exclusive jurisdiction of the state, which would have control over it under normal circumstances. In the context of international criminal law, the International Criminal Court is a permanent court established by the United Nations based on the 1998 Rome Statute. Courts are appointed as instruments to try people who commit international crimes.

**Keywords:** Role, Diplomacy, Enforcement, Law, Crime, Transnational

### A. INTRODUCTION

Globalization is often interpreted as globalization in the fields of economy, trade and investment. The progress and development of the world seems to make national borders, sovereignty and sovereign rights blurred in the fields of economy, trade and investment. This causes the occurrence of various forms of crime that are broad in nature to exceed the boundaries of a country's jurisdiction.

In Indonesia, transnational crime is a real security threat that Indonesia has been severely harmed by transnational crime. Some terrorism crimes in the form of bomb explosions that occur in Indonesia are very detrimental to the country. Other crimes in the field of illegal logging, illegal trading, cybercrime, drug trafficking, and other forms of transnational crime are also increasingly worrying. The threat of transnational crime is a real threat to Indonesia. The handling of this transnational crime must be taken seriously. Its structure and characteristics, which are usually organized so that it is difficult to dismantle with a mere legal

investigation approach, certainly cannot only be done alone by law enforcement officials (police) themselves. It takes the cooperation of all components both at home and abroad in handling this transnational crime. Transnational crimes that tend to involve networks in some countries result in the need for regional and international cooperation with other countries in terms of data and information exchange. Domestically, internal coordination and cooperation between departments and law enforcement in dealing with transnational crimes are needed.

Transnational crime is organized crime, whose area of operation includes several countries, which affects the political, governmental, socio-cultural, and economic interests of a country and is global. Conceptually, transnational crime means a criminal act or crime that crosses national borders. This concept was first introduced internationally in the 1990s at The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Previously, the term that had already developed was organized crime.

The Convention on Transnational Organized Crime of 2000 affirms that the transnational nature / character of transnational crime can be measured from 4 (four) things, first, locus delicti occurs in more than one country; second, locus delicti in one country but planning, control and direction carried out in another; third, locus delicti in one country but involving criminal organizations engaged in crime in more than one country; and fourth, it is carried out in one country but has an impact in another.

The United Nations has passed Resolution 55/25 on the United Nations Convention against Transnational Organized Crime. In this Convention it is determined that an offence is transnational, if in the crime involves more than one state. For example, carried out in two or more countries, carried out in one country but prepared, supervised or controlled from another country, carried out in one country but involving criminal organizations that are active in more than one country and are carried out in one country but have an impact in another. A transnational crime involves two or more states, one of the problems that arises is determining which state has jurisdiction over the perpetrator, and what efforts should be taken to mitigate, even if possible prevent and mitigate this crime.

A state in exercising its criminal jurisdiction is based on principle. This definition seems to mean "personal jurisdiction" broadly, that is, both in public law and in law. A country can prosecute its citizens who commit crimes anywhere in the world. The implementation of this principle does depend on the quality of the person involved in the legal event. A state or states exercise jurisdiction if that person is within the power of the state, and proceedings can be brought against him. A state exercises its personal jurisdiction, depending on the characteristics of the person involved in a crime. For example, citizens or foreigners, enjoying immunity or not, act on behalf of the state or for personal interests. In international practice, the implementation of this principle was developed into active nationalities and passive nationalities. Based on the principle of active nationality, the state can exercise jurisdiction over any of its citizens who commit crimes wherever committed.

In accordance with the definition of "territorial jurisdiction", a state in addition to having the right to regulate and has the authority to enforce its laws against people, things, things and legal

events / events that occur in its territory. However, with the advancement of satellite and communications technology today, "a crime" can be committed by someone who is in another country outside the territory of the country. As mankind progressed, territorial jurisdiction in practice underwent a technical expansion, consisting of subjective territoriality and objective territoriality. According to the principle of subjective territoriality, a state has the right to exercise its jurisdiction to prosecute and punish perpetrators of crimes committed within its territory and ending up in the territory of another state. On the contrary, according to the principle of objective territoriality, a state has the right to exercise its jurisdiction to prosecute and punish perpetrators of a crime that begins in another state, but is resolved within its territory.

Each State may exercise its jurisdiction against crimes contrary to the security and integrity of its territory or its vital economic interests. This means that a country has legal authority over foreigners who commit crimes abroad that have repercussions on the security of their country. Every State has the right to establish its jurisdiction against perpetrators of crimes committed to violations of international order.

Indonesia in combating transnational crime has ratified the UN convention, the United Nations Convention against Transnational Organized Crime. UNTOC was established on December 15, 2000 in Palermo, Italy, as a manifestation of its commitment to eradicate transnational organized crime through bilateral, regional, or international cooperation frameworks. This Convention has been adopted into a national legal provision with the birth of Law Number 5 of 2009. Although Indonesia is a signatory to the Convention, Indonesia states the reservation of article 35 paragraph (2) which regulates the choice of States Parties in resolving disputes in the event of differences in interpretation or application of the Convention.

Another convention that discusses transnational crimes is the United Nations Convention against Corruption (UNCAC) in 2003, which has been ratified by Indonesia based on Law Number 7 of 2006. This Convention has provided for several substances relating to the regulation of sovereign protection issues, expiration issues, jurisdictional issues, and extradition issues.

To be able to overcome crimes that do not know the country's borders, the National Police through the National Central Bureau (NCB) will often liaise with Interpol and international police. In an effort to combat crime, INTERPOL frequently establishes arrest warrants for all member states to enable each member state to locate and arrest perpetrators. Cooperation between countries through the involvement of INTERPOL can play an important role in arresting and repatriating fugitives. With all the extraordinary steps and the spirit of cooperation between countries in fighting crime, efforts to hunt down perpetrators of corruption crimes who fled abroad, although slowly but surely will bear fruit. Currently, people just have to wait and see the perpetrators of escaped crimes can be arrested and tried in Indonesia. The joining of Indonesia in INTERPOL requires Indonesia to have an INTERPOL office called NCB-INTERPOL (National Central Bureau - INTERPOL). NCB-INTERPOL is a branch office of INTERPOL in each member country. In Indonesia, the office is located at the headquarters of the National Police.

Juridically, the establishment of a National Central Bureau (NCB) in a country is based on Article 22 of the ICPO-INTERPOL Constitution which states that each member state must appoint a body that functions as a National Central Bureau, guaranteeing relations with various departments within the country, with NCBs of other countries and with the Secretary General of ICPO-INTERPOL. In addition to organizing cooperation / coordination through the ICPO-INTERPOL forum in order to support efforts to combat international / transnational crime, it also organizes international / interstate cooperation in order to support the development of the National Police both in the fields of education, training and technology and "peace keeping operation" activities under the UN flag.

There are many things that can be utilized with the existence of NCB-INTERPOL Indonesia, including: 1) Investigation assistance (checking identity, whereabouts of a person, exit / entry data from a country, documents, addresses, criminal records, status of a person and others); 2) Investigative assistance (examination of witnesses/suspects, sending investigators to a country, borrowing evidence, searches, cross-country seizures, summoning witnesses and others; 3) Search for fugitives who fled to other countries, etc.

In international cooperation, there are several paths that can be taken, among others, through the police to police route. This path can be taken if you already have a good relationship with the State Police who are invited or asked for cooperation. If it cannot be taken, you can go through the INTERPOL route. So NCB-INTERPOL Indonesia connects to NCB-INTERPOL other countries to ask for / asked for cooperation. And if this is still not possible, then an official route is taken, namely through diplomatic channels by submitting through the Ministry of Foreign Affairs of the Republic of Indonesia representing the Government of Indonesia to liaise with the governments of other countries. It should be underlined that if the investigator does not have a good relationship with the local state police, he cannot / should not ask for help to the country. This is a form of violation of the cooperation mechanism and can cause consequences ranging from no response, protests through diplomatic channels, and reprimands of the Indonesian Embassy / Ministry of Foreign Affairs to the Chief of Police to the negative image of other countries towards the National Police.

The forms of cooperation that have been carried out by the National Police with other countries in arresting perpetrators of crimes can be in the form of agreements such as extradition treaties. Extradition treaties that have been implemented include with Malaysia (Law No. 9 of 1974 concerning the Ratification of the Agreement between the Government of the Republic of Indonesia and the Government of Malaysia concerning Extradition), with the Philippines (Law No. 10 of 1976 concerning the Ratification of the Extradition Treaty between the Republic of Indonesia and the Republic of the Philippines and the Protocol), with Thailand (Law No. 2 of 1978 concerning the Ratification of the Agreement between the Government of the Republic of Indonesia and the Government of the Republic of Indonesia and Royal Thai Government on Extradition), with Australia (Law No. 8 of 1994 on Ratification of Extradition Treaty between the Republic of Indonesia and Australia), with Hong Kong (Law No. 1 of 2001 on Ratification of Agreement between the Government of the Republic of Indonesia and the Government of Hong Kong for the Transfer of Fleeing Offenders), with South Korea (Law No. 42 of 2007

concerning Ratification of Extradition Treaty between the Republic of Indonesia and the Republic of Korea) and with the PRC (ratification process).

Other forms of cooperation are in the form of MoUs in the context of tackling transnational crime and capacity building, education and training (such as: JCLEC, BKA, ICITAP, JICA, FBI, ATA, ILEA, Platina, CoESPU, etc.) as well as international meetings namely the General Assembly of ICPO-INTERPOL, ARC (Asean Regional Conference), ASEANAPOL, SOMTC (Senior Officer Meeting on Transnational Crime), AMMTC (ASEAN Ministerial Meeting on Transnational Crime), Operation Storm, UNODC (United Nations Office on Drugs and Crimes).

This study focused on diplomacy in law enforcement of transnational crimes. Transnational crime, or what is known as transnational crime causes many losses to a country, even to certain areas within the country. Various deviations that can be done, such as exploitation (natural resources and human resources) that are too excessive have an impact on humans in the world. The emergence of problems, such as poverty and conflict is one of the causes of transnational crime. By its nature that can cross national borders and can affect other countries, transnational crime becomes a threat to global security. Law enforcement provisions with an international dimension, sometimes the perpetrators of crimes to be processed, tried, or executed are not in the territory of the country that will carry out the process, but are in the territory of another country. For this reason, there are several models of international law that can be used to resolve obstacles in handling transnational crimes, such as through the means of applying for mutual legal assistance in criminal matters (MLA) and extradition.

The problem that occurs in many countries, especially European countries, in accordance with their country's national laws, extradition can only be carried out if the requesting country and their country already have an extradition treaty. While good diplomacy is needed to obtain the ratification of the extradition treaty, on the other hand due to the multidimensional nature of transnational crimes, good cooperation between countries is needed in handling them. From the various descriptions above, the author wants to research more deeply about it and the author presents it in the form of a scientific description of a dissertation.

## **B. RESEARCH METHODS**

The type of research used is empirical juridical research. Empirical juridical research which in other words is a type of sociological legal research and can be mentioned by field research, which examines the legal provisions that apply and that have occurred in people's lives. Or in other words, it is a research carried out on the actual situation or real conditions that have occurred in the community with the intention of knowing and finding the facts and data needed. In this study to provide a complete picture of law enforcement norms against transnational crime through a study of the form and role of diplomacy in law enforcement against transnational crime in Indonesia, then diplomatic arrangements in law enforcement against transnational crime in Indonesia, as well as obstacles and solutions in diplomacy in law enforcement carried out by Indonesia in dealing with transnational crime through cases of transnational crimes that have occurred in Indonesia.

## C. RESEARCH RESULTS AND DISCUSSION

### 1. Diplomatic Arrangements in Law Enforcement against Transnational Crime in Indonesia

Practice in Indonesia related to the existence of international customary law, has not shown a firm attitude. But for some things, such as customary law at sea on the right of peaceful passage for foreign vessels in the Indonesian territorial sea, Indonesia accepted the customary law. Meanwhile, related to Indonesia's attitude towards international agreements, it is based on Indonesia's interests and Indonesia's attachment to the international agreement.

The creation and ratification of international agreements between the Government of Indonesia and the governments of other countries, international organizations and other subjects of international law is a very important legal act because it binds the state with other subjects of international law. Therefore, the making and ratification of an international treaty is carried out based on law. Prior to Law No. 24 of 2000 concerning International Treaties, the authority to make international agreements as stipulated in Article 11 of the 1945 Constitution, stated that the President had the authority to make international agreements with the approval of the House of Representatives. Article 11 of the 1945 Constitution requires a further elaboration of how an international treaty can apply and become law in Indonesia. For this reason, through Presidential Letter No. 2826 / HK / 1960 tried to further elaborate Article 11 of the 1945 Constitution.<sup>1</sup>

The regulation on international agreements has been described in the form of Presidential Letter No. 2826/HK/1960, dated August 22, 1960, addressed to the Speaker of the House of Representatives, and has been a guideline in the process of ratifying international agreements for many years. Ratification of international agreements according to this Presidential Letter can be done through laws or presidential regulations, depending on the material regulated in international agreements. But in practice the implementation of this Presidential Letter has many irregularities so that it needs to be replaced by a law that specifically regulates international agreements. This then became the reason for the need for international agreements regulated in Law No. 24 of 2000.<sup>2</sup>

In general, the ratification of international agreements is divided into four categories, namely:

- 1) *Ratification*, which is if the country that will ratify an international treaty also signs the text of the international agreement;
- 2) *Accession*, which is when the country that will ratify an international treaty does not sign the text of the agreement;
- 3) *Acceptance or approval* is a statement of acceptance or approval from states parties to an international agreement on changes to the international treaty; and
- 4) International agreements that are *self-executing* (immediately effective at the time of signing).

In an international treaty ratification, the signing of an agreement cannot necessarily be interpreted as binding the parties to the treaty. The signing of an international treaty requires ratification to be binding. An international treaty shall not be binding on the parties before it is ratified.

## **2. The Role of Diplomacy in Law Enforcement against Transnational Crime in Indonesia**

Transnational crime is related to many countries, so it requires the involvement of various parties to deal with it, also requires strong commitment and common will from all countries and various related components, which have an interest in achieving peace and internal security for each country.

In its efforts, the government implements various ways and strategies in the hope of eradicating crime from the list of problems that occur in the country. Not only efforts to eradicate but also the government exerts its efforts in preventing and reducing the intensity of crime.

Demi tracks the whereabouts of perpetrators of government crimes in collaboration with several parties who are considered to be able to help the search for perpetrators of crimes in other countries. This search is not an easy matter, especially since the level of citizen awareness of the law between countries is clearly different.

Mutual Legal Assistance in Criminal Matters, crime never knows space boundaries and time, while law enforcement has limited jurisdiction regulated by law. The procedures for investigation, prosecution and examination in court as stipulated in the Criminal Procedure Code only apply in the territorial jurisdiction of the country. Law enforcers will experience obstacles when an investigation process crosses the jurisdiction of countries where each country has different legal systems and criminal procedure procedures.

To overcome differences in legal systems and procedures for the event, it can be overcome through the cooperation of Mutual Legal Assistance (BHTB) between two or more countries known as Mutual Legal Assistance in Criminal Matters (MLA). There are many requirements that must be met in extradition and MLA, all of which are contained in the Act, giving the impression that extradition or MLA has a convoluted flow and the length of the process. However, this happens solely to respect and comply with the rules or regulations both in one's own country and other countries.

### **Confronting the Transnational Crime of Terrorism**

A series of terrors that occurred made terrorists increasingly exist which was also proven by various subsequent bombings in public areas. The issue of terrorism is seen as a non-traditional threat which is then presented as a new threat to the political order, as well as world security. So dealing with these non-traditional security threats requires a comprehensive approach.

In Indonesia there was an act of terror on October 12, 2002 in Bali. After this incident, the Indonesian government initiated bilateral cooperation in the security sector to be able to face the threat of terrorism. This cooperation is committed not to interfere with the internal affairs between countries.

In fact, cooperation between Indonesia has been built since 1968. For example, cooperation with the later inauguration of cooperation in 2002 this cooperation was given a forum so that it became the Indonesia-Australia Defence Cooperation Program (DCP). Every year DCP has regular meetings and joint military exercises between the two countries.

Indonesia and Australia are not only focused on dealing with terrorism but also provide more attention to handling terror acts that have occurred. In its handling of the Bali bombings, Australia made a change in its policy because Australia felt its territoriality was threatened. The form of cooperation carried out by Indonesia-Australia in dealing with the Bali bombing through the Joint Investigation and Intelligence Team to Investigate Bali Bombing which is a collaboration between the Indonesian National Police and the Australian Federal Police (AFP) by forming an anti-terror intelligence agency aimed at joint investigation in uncovering the causes of the Bali I bombing terror.

While in handling the bomb terror at the Rizt-Carlton Hotel and JW Marriot on July 17, 2009, the government felt part of the responsibility to help Indonesia in accordance with the cooperation that had been signed previously. Australia provides assistance in the form of cooperation in identifying and treating victims of bomb terror acts.

### **Transnational Crime, Corruption and Money Laundering**

Corruption and money laundering are unlawful and inseparable. Corruption is the act of public officials, both politicians and civil servants and other parties involved in such acts who unreasonably and illegally abuse the public trust entrusted to them to obtain unilateral benefits. While money laundering is an act that aims to wash or clean the origin of the acquisition of one's wealth from a criminal act so that the property changes status, becoming legal tender.

For example, cooperation between Indonesia and Australia has established cooperation in the field of justice and security in, the Indonesia-Australia Partnership for Justice Phase II or Australia Indonesia partnership for Justice (AIPJ II). Indonesia and Australia believe that an international agreement is the best way to address these threats. This threat is in the form of corruption and money laundering that can harm each country.

AIPJ II will support key Australian and Indonesian institutions to continue close cooperation in the areas of law, justice and security, such as the landmark cooperation between the Australian Federal Police and the Indonesian National Police, and the collaboration between the Supreme Court of Australia and the Supreme Court of the Republic of Indonesia.

Cooperation in the form of assistance to judicial institutions in Indonesia, increasing capacity to prosecute money laundering and criminal asset confiscation cases, and developing the investigative capacity of the Indonesian Corruption Eradication Commission (KPK).

### **People Smuggling and Trafficking in Person**

The problem of illegal immigrants will not be resolved and is still a homework for the Indonesian government. This is because the problem of illegal immigrants has occurred since decades ago due to various events in other countries such as war conflicts, victims of human rights violations or poverty. Indonesia is a transit country on the way to Australia, so this makes



Indonesia must work together to be able to deal with the problem of illegal immigrants and people smuggling.

The Indonesian government agreed to make the problem of illegal immigrants a common problem, not only imposed on Indonesia or other countries. For example, what happened in Australia has been the main destination for refugees from conflict countries. This is because Australia already has laws governing refugees. Australia also signed the Refugee Convention in 1951. The convention makes Australia have to accept refugees who come to its country.

On the other hand, Indonesia is not a ratification country of the 1951 Geneva Convention and the 1967 Protocol regarding the handling of refugees. Although it is not a destination country for refugees, Indonesia's geographical position makes refugees have to pass through it first before reaching Australia so it is important as a transit country. Therefore, cooperation between Indonesia and Australia involving the Australian Federal Police (AFP) and the National Police will work together to prevent and combat cross-border crime affecting both Australia and Indonesia.

### **3. Forms of Law Enforcement Cooperation against Transnational Crime in Indonesia**

Cooperation to be able to overcome transnational crime includes:

Intelligence exchange and capability building in the region's counter-terrorism with a focus on threats to Australia and Indonesia. Of particular importance is the exchange of information regarding foreigners traveling to Syria and Iraq who will continue to present a threat to the region's counter-terrorism;

- a. Extradition of suspected people smugglers facilitating travel from Indonesia to Australia;
- b. Dismantling and investigating people smuggling offenders;
- c. Police capacity building throughout Indonesia by implementing AFP training and education programs for members of the National Police.

Crime develops as if it knows no borders between countries. In view of this, efforts to eradicate crime are carried out by means of cooperation between the National Police and the International Criminal Police Organization (ICPO / Interpol) in contact through the National Central Bureau (NCB). In an effort to combat crime, Interpol often circulates arrest orders to all member states so that all Interpol member states can find the perpetrators of crimes and arrest them.

In the discussion of Law of the Republic of Indonesia number 2 of 2002 concerning the police above, conclusions can be drawn regarding cooperation, assistance and Interpol relations according to Law of the Republic of Indonesia number 2 of 2002 are:

- 1) The cooperative relationship between the Indonesian national police and other countries in the security sector can be carried out based on functional relationships, mutual respect, mutual assistance, prioritizing public interests, and paying attention to hierarchy.
- 2) The cooperative relationship of the Indonesian national police with other countries in the framework of operational tasks as well as technical cooperation and education and training is carried out, especially with other police and law enforcement agencies regarding bilateral or multilateral cooperation and crime prevention agencies.

The implementation of the relationship and cooperation of the national police of the Republic of Indonesia is also regulated in the Government Regulation of the Republic of Indonesia number 68 of 2008 concerning procedures for implementing the relationship and cooperation of the national police of the Republic of Indonesia. In the Government Regulation of the Republic of Indonesia number 68 of 2008 concerning procedures for implementing the relationship and cooperation of the national police of the Republic of Indonesia Chapter I regarding general provisions, it is stated in Article 2 that cooperation is held with the aim of smooth implementation of police duties functionally both in the operational and coaching fields.

Article 3 paragraph 1 states that domestic cooperation is based on 13 principles, namely: Prioritizing national interests; Balance; Mutual respect; Help each other; Equality of position; Mutual benefit; Prioritizing the public interest; Pay attention to hierarchy; Participation; Subsidiarity; Joins functional relationships; Good faith; and Neutrality.

Article 3 paragraph 2 mentions the cooperation of the Republic of Indonesia with other countries. It is stated that in a cooperation between a country and other state parties must also pay attention to the national laws of each country as well as applicable customary and international law.

#### **4. Legal Obstacles in the Implementation of Transnational Crime Law Enforcement Diplomacy**

Institutions for combating crimes related to transnational crime are certainly required to pay attention to factors that can affect law enforcement itself. These factors according to Soerjono Soekanto are the law itself, law enforcement factors and factors of facilities and infrastructure that support law enforcement, community and cultural factors.

The Indonesian Police as the main component of maintaining internal security as mandated by Law Number 2 of 2002 concerning the National Police which in carrying out its duties as law enforcement, of course, in securing transnational crimes, most of which are certainly very in contact with other agencies.

The involvement of these other agencies in their development often faces various obstacles and problems. The obstacles faced are for example related to the issue of investigative authority, investigation jurisdiction, handling suspects and evidence, even the problem of handling and auctioning evidence. Enforcement involves many other elements or agencies because of the wide reach of national jurisdiction and division/regulation.

Obstacles related to legal structure can be interpreted as obstacles involving formal legal aspects on which the authority is given and the procedures for the overall operation of law enforcement agencies. The legal structure can be said to be an institution that runs law enforcement with all the processes that take place in it So the obstacles that are institutional law enforcement officers (law enforcement officer) which include:

1. Lack of coordination between law enforcement officers in the field. This is evidenced by the lack of common perceptions about law enforcement. Law enforcement impressed the sectoral egos of each agency. Each agency equally has the authority as an investigator of certain criminal acts which subsequently overlaps the authority and policies of each agency. Each agency seems to work independently. The cooperation forum at the central level in its application has not run optimally and comprehensively to all stakeholders in the field. And worse, sometimes there are small frictions / incidents or conflicts of interest at sea between officials which in the end this clearly benefits the perpetrators of crime;
2. Human resources. This is a concern for the inadequate quality of investigators. Investigators do not all have the legal qualifications or at least master the techniques and tactics of investigation in transnational crimes. Investigation is a special skill so not all investigators can do it well. In addition, the breadth of work areas in maintaining security and law enforcement plus the limited ability of personnel who have the qualifications of investigators of certain criminal acts which results in less professional law enforcement.
3. The mental lace of law enforcement officers. The big problem of the Indonesian nation today is the low quality of moral integrity and ethics of law enforcement officers including law enforcement against transnational crimes. Many law enforcement officers do not hesitate to ask for a sum of money so that those arrested can be released. This kind of modus operandi has been around for a long time, especially when arresting.

These three things can certainly be achieved if they are in a good system, through recruitment and selection that is truly measurable. Integrity and professionalism also do not come from birth, but are formed in the process of carrying out their duties and obligations in a good system. Crack down on rogue law enforcers.

## **5. Solutions for Police Diplomacy Cooperation in Transnational Crime Law Enforcement**

In accordance with the objectives of ICPO-Interpol in Article 2 of the Constitution of the International Criminal Police Organization-Interpol, the function of Interpol itself can be divided into 2, namely the function of combating international crime and the function of

international cooperation. As stated in Article 2 of the Constitution of the International Criminal Police Organization-Interpol, the first is to ensure and promote the widest possible relationship of mutual assistance between all police authorities within the limits of the law in different countries and within the spirit of the Universal Declaration of Human Rights. The second is to establish and develop all institutions that contribute effectively to the prevention and suppression of common law crimes. It is not uncommon for countries to request assistance from Interpol in tracking and locating a person wanted by one country who has fled to another country and extradition efforts are needed.

The anti-international crime function focuses more on the exchange of information between police of Interpol member states, the identification of wanted persons or parties and the arrest of persons seeking extradition. The function of international cooperation focuses more on the issuance of notices containing requests from a country for cooperation or warnings that allow police in member states to share important information related to crime. There are 8 types of notices issued by the Interpol General Secretariat, namely: Red Notice, Yellow Notice, Blue Notice, Black Notice, Green Notice, Orange Notice, Purple Notice and UN Security Council Special Notice.

Articles 31 and 32 of the Constitution of the International Criminal Police Organization (INTERPOL) state that it requires continuous and active cooperation from each member state to do all they can within the legal limits of their country to participate in Interpol which is realized by the establishment of National Central Bureaus (NCB) in ICPO-Interpol member countries. One of the tasks of the NCB is the exchange of information on transnational and international crimes, especially on Red Notices issued by Interpol and as a liaison of communication and information between the Police in member countries and ICPO-Interpol.<sup>8</sup>

Extradition is seen as a tool or means of a mechanism of cooperation between countries in order to prevent and eradicate transnational or transnational crime. Extradition is based on law in bilateral treaties and does not appear as a necessity for states in customary law. If such an extradition treaty does not exist, it is likely that the extradition request will be rejected by the requested State, despite opportunities other than the treaty to request extradition to the requested State through the path of reciprocity and/or good relations.

This is to show Indonesia's commitment in fighting international and transnational crime. If there is no prior extradition treaty, the requesting country can submit an arrest request through Interpol. The arrest request is made by Interpol through Red Notices and Diffusion is sent to the ICPO-Interpol General Secretariat which will be forwarded to the NCB in the country where the perpetrator is located.<sup>13</sup> Diffusion is almost the same as Notices but the difference is if Notices are issued directly by the ICPO-Interpol General Secretariat, while Diffusion is issued by the NCB of the Interpol member country itself.

The role of ICPO-Interpol in extradition can also be found in extradition treaties between countries such as in the extradition treaty between the Republic of Indonesia and Australia. Where Article 10 paragraph (1) of the Australia-Indonesia Extradition Treaty states that in urgent circumstances, the contracting state can use ICPO-Interpol facilities to carry out temporary

detention by the requested state of a person sought by the requesting state, while waiting for an extradition request by the requesting state to the requested state through diplomatic channels. So that the role of ICPO-Interpol in extradition is not only limited to the dissemination of fugitive information and extradition carried out by requesting countries that do not yet have an extradition treaty with the requested state, but can also be included as another alternative by countries in their extradition treaties if the diplomatic path cannot be taken.

The International Criminal Police Organization (ICPO) or better known by its electric telegraph address, INTERPOL, is an organization formed to coordinate cooperation between police forces around the world. So, INTERPOL does not stand for International Police, but is a password used in international communication between members. The headquarters of ICPO-Interpol is located in Lyon, France. As of 2015, ICPO-Interpol members number 190 countries and the last 3 (three) member countries are Curacao, Saint Marteen and South Sudan.

Cooperation between the National Police of the Republic of Indonesia and the International Criminal Police Organization

In the context of international criminal law enforcement, international cooperation is something *conditio sine qua non*. The need for international cooperation relates to the nature of criminal acts that occur not only involving two or more legal jurisdictions, but also have an international aspect, namely threats to world security and peace or destabilizing humanity.

By involving more than one different legal system, inevitably cause interdependence between countries in the world, which then encourages international cooperation which in many ways is outlined in the form of international agreements. Differences in philosophy and outlook on life and others, are no longer an obstacle in conducting relations and cooperation between countries. Globalization and technological progress with its positive and negative impacts have encouraged the need for firm and definite arrangements in the form of the formulation of agreements. It is therefore not surprising that today and in the future, there will be more and more international treaties.

Law Number 24 of 2000 concerning International Agreements mandates, that in making international agreements both with one country and with international organizations or other subjects of international law, it is mandatory to pay attention to and fulfill:

1. Must be based on the agreement of the parties, and the parties are obliged to execute the agreement in good faith.
2. Must be guided by national interests and based on the principles of equality, mutual benefit, and due regard to both national and international law.

International criminal law as a new branch of science in the history of its development is inseparable and even closely related to the history of the development of Human Rights (HAM). This close relationship can be described as two twins, who have a strong dependence (interdependency), synergistic, and continuous.

Regarding the form of international cooperation in the enforcement of international criminal law, as mentioned in the United Nations Convention Against Transnational Organized Crime

(UNTOC), among others, such as extradition (Article 16), transfer of prisoners (Article 17), mutual legal assistance (Article 18), joint investigation (Article 19), cooperation in conducting special investigation techniques (Article 20), and transfer of criminal proceedings (Article 21). Article 27 of UNTOC on law enforcement cooperation, more specifically emphasizes law enforcement cooperation in various aspects of a more operational technical nature as stated in Article 27 paragraphs 1 letter a to f.

This has been done by Indonesia, especially by the Indonesian National Police, either directly with the police of friendly countries (bilateral) or cooperation through INTERPOL / ICPO (International Criminal Police Organization). The question is whether any cooperation between law enforcement agencies is based on an international agreement or not. In Article 27, paragraph 2, UNTOC emphasizes States parties to make international agreements if they have not, or if they have been amended to be adjusted.

Two more things support cooperation between the organization and its members. The first is how Interpol raises the pillar of awareness-raising by using online campaigns or not. Second, Interpol also provides legal assistance to develop member state police in response to illicit trafficking issues. The International Crime Section in Interpol-Indonesia's NCB chart is tasked with carrying out cooperation and one of them is by requesting international legal assistance.

In this case, extradition is one example of cooperation between Interpol members. The procedure taken is also very regular and organized. Countries in need will ask other countries through diplomatic channels or NCB Interpol of their respective countries. Usually this request will be notified to the member state immediately through the I-24/7 communication system technology. Another assistance in law as explained in part in the second variable is Mutual Legal Assistance which is used to overcome differences in legal systems and criminal procedure procedures

At Interpol, this section is handled by the International Crime Section or BAGJATINTER. Some examples of mutual legal assistance agreements between Indonesia and the help of Interpol interference with other countries are:

1. RI-Australia, Law of the Republic of Indonesia No. 1 of 1999.
2. RI-PRC, LAW OF THE REPUBLIC OF INDONESIA No. 3 of 2006.
3. Joint multilateral agreements with eight ASEAN member states that have been ratified by Law of the Republic of Indonesia No. 15 of 2008 concerning ASEAN MLA.

Interpol serves as a driver and as a bridge to international relations ties, especially in the field of cooperation. If countries generally cooperate with bilateral or multilateral relations, international organizations such as Interpol can help countries to behave according to standards that look equally on all countries. With the mutually agreed regime in Interpol, countries can cooperate without fear that other countries will act alone which is threatening.

The forms of cooperation include:

### **1. Ekstradisi**

Several principles of extradition are contained in UNTOC, namely the principle of double criminality (Article 16 paragraph 1), the principle of non-extradition of nations (Article 16 paragraph 10), the principle of not handing over perpetrators of political crimes (non-extradition of political crime Article 16 paragraph 14). In addition to UNTOC, extradition is also regulated in the United Nations Model Treaty on Extradition in 1990 which has been widely followed by other countries, especially in making treaties and in extradition legislation. For Indonesia, the implementation of extradition is based on bilateral agreements as stipulated in Law Number 1 of 1979 concerning Extradition or is also possible on the basis of the principle of reciprocity adopted by international law.

However, Law No. 1 of 1979 must be adjusted, because it does not or has not contained provisions requiring speeding up extradition procedures and simplifying evidentiary requirements (Pala 8 UNTOC), does not contain provisions for not surrendering citizens (Article 10 UNTOC) and does not contain provisions for the application of punishment to citizens of the requested country (Psl 12).

### **2. Transfer of Prisoners**

Regarding the transfer of prisoners, UNTOC only calls for bilateral or multilateral agreements or laws and regulations within the State Party. An international treaty that can be used as a reference is: the Convention on the Transfer of Sentenced Persons (1983) between the States of the Council of Europe (Council of Europe) and the Schengen Convention (Title III Chapter V) (1990) which is a supplement to the 1983 Convention. This international agreement on the transfer of prisoners was made with humanitarian considerations, namely giving (foreign) prisoners serving sentences in other countries the opportunity to serve the crime or the rest of their sentences in their own countries.

The (foreign) prisoner must also be respected for his choice to carry out the sentence in another country or in his own country. In Indonesia, transfers are regulated in laws such as the Criminal Procedure Code, Law Number 92 of 12 of 1995 concerning Corrections or Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters. Although no article explicitly regulates the transfer of prisoners, all of these laws do not prohibit the transfer of prisoners cooperation agreements as urged by UNTOC.

### **3. Lead Legal Aid**

In terms of mutual legal assistance in criminal matters in the context of ASEAN countries (Brunei Darussalam, Indonesia, Cambodia, Laos, Malaysia, Philippines, Singapore and Vietnam) an agreement was signed: "Treaty on Mutual Legal Assistance in Criminal Matters" in Kuala Lumpur on November 20, 2004. Myanmar became a party to the ASEAN Treaty on MLA in December 2009. Only Thailand is not a party to this Treaty. Domestically, Indonesia already has its own law, namely Law Number 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters.

When compared between the provisions on mutual legal assistance in UNTOC criminal matters and Law Number 1 of 2006, there are indeed the same provisions and there are also vacancies on one side or another.

#### **4. Joint Investigation**

Article 19 of the UNTOC mandates obligations to States parties to consider bilateral or multilateral agreements or arrangements on the subject of investigation, prosecution or judicial proceedings in one or more States. The choice of making or not making an agreement is entirely the right of the state party, which even if there is a case, the parties can still cooperate on a case-by-case basis.

Indonesian laws such as Law Number 2 of 2002 concerning the Police, Law Number 16 of 2004 concerning the Prosecutor's Office or Law Number 48 of 2009 concerning Judicial Power, do not expressly regulate the possibility of conducting joint investigations as stipulated by UNTOC. However, even the three laws do not prohibit it. In other words, it provides the possibility to carry out such international cooperation.

#### **5. Cooperation in conducting special research techniques**

Regarding special investigation techniques as mandated by UNTOC, in Indonesian laws and regulations, especially in laws outside the Criminal Code, many have regulated it, such as Law Number 1 of 2002 jo Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, Law Number 8 of 2010 concerning the Eradication of Money Laundering Crimes, Law Number 31 of 1999 jo Law Number 20 of 2001 concerning the Eradication of Acts Corruption Crime, Law Number 30 of 2002 concerning the Corruption Eradication Commission, and Law Number 2009 concerning Narcotics. So about this particular investigative technique can already be used as a basis for making international agreements in the enforcement of transnational criminal law.

#### **6. Transfer of Criminal Proceedings**

This transfer of criminal proceedings is the transfer of persons alleged, suspected or charged with criminal acts regulated in the UNTOC to a state party that is considered the most appropriate and effective state in carrying out its prosecution and trial. Of course, this transfer is at the same time with the evidence, especially moving objects. Thus, the prosecution and judicial process is centered on the state party concerned.

Indonesian law in this case the Criminal Procedure Code or other legislation does not regulate the issue of transferring this criminal process, but Articles 3 and 4 of Law Number 1 of 2002 jo Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism explicitly allow for the transfer of this criminal process.

The International Crime Section abbreviated as Bagjatinter is tasked with carrying out cooperation activities between NCB-Interpol in the context of preventing and combating international crime and transnational crime as well as international public services in relation to crimes including perpetrators, fugitives and international legal assistance as well as the search for missing persons suspected to be abroad. Bagjatinter also carried out preliminary



investigations and investigations into violations or criminal acts that occurred in Indonesian representatives, aircraft and RI-flagged ships in order to realize protection, service to Indonesian citizens abroad. In carrying out these tasks, Bagjatinter performs the following functions:

- a. Preparation of international products, for example: dissemination of international DPO (List of Search Persons), modus operandi that occurs in other countries, making country paper, and others.
- b. Countering common crimes related to other countries.
- c. Countering special economic crimes related to other countries.
- d. Provision of international legal assistance related to Extradition, MLA and search for fugitives or issuance of Notices. For example: arrest of KPK fugitives (corruption cases).

In carrying out these tasks, the International Crime Section (Bagjatinter) is assisted by 4 (four) subdivisions, including:

- a. General crimes subdivision (subbagjatam) in charge;
  1. Facilitate and coordinate the countering of common crimes related to other countries.
  2. Carry out correspondence through the INTERPOL and ASEANAPOL network systems.
  3. Carry out coordination with regional units on problems both requested by fellow NCB-Interpol member countries and from regional units.
- b. Special Economic Crimes Subdivision (subbagjateksus) in charge of:
  1. Facilitate and coordinate the countering of special economic crimes associated with other countries.
  2. Carry out correspondence through the INTERPOL and ASEANAPOL network systems regarding special economic crimes.
  3. Carry out coordination with regional units on problems both requested by fellow NCB-Interpol member states and from regional units related to special economic crimes.
- c. International Products Subdivision (Subbagproduktinter) in charge:
  1. Carry out the preparation of international products, including: making country papers, disseminating actual international news about piracy, narcotics, etc.
  2. Conduct internal police meetings with relevant ministries in preparing the position paper of the Indonesian delegation.
  3. Carry out studies and provide recommendations to Kabagjatinter. (Chairman of the International Crime Section)

d. International Legal Aid Subdivision (Subbagbankuminter) in charge of:

1. Facilitate and coordinate the implementation of Extradition and MLA duties.
2. Facilitate the issuance of red notices.
3. Conduct searches for fugitives at the request of fellow NCB-Interpol member countries.

#### **D. CONCLUSION**

Diplomatic arrangements in law enforcement against transnational crimes in Indonesia are carried out based on international agreements either by means of a) Ratification, b) Accession, c) Acceptance or approval, and d) international agreements that are self-executing (immediately effective at the time of signing) based on Indonesia's interests and Indonesia's attachment to the international agreement in accordance Law No. 24 of 2000 concerning International Treaties.

the role and form of diplomacy in law enforcement against transnational crime in Indonesia as follows; a) the role of diplomacy in law enforcement against transnational crimes in Indonesia is carried out to deal with transnational crimes and international crimes such as Terrorism, Corruption and Money Laundering, Smuggling and Human Trafficking Crimes and other crimes that cross territorial boundaries between countries that require international cooperation; b) Forms of Law Enforcement Cooperation Against Transnational Crime in Indonesia including cooperation between the National Police and the International Criminal Police Organization (ICPO / Interpol) related through the National Central Bureau (NCB).

obstacles and solutions in diplomacy in law enforcement carried out by Indonesia in dealing with transnational crimes are as follows; a) obstacles in diplomacy in law enforcement carried out by Indonesia in dealing with transnational crimes, namely (1) obstacles to the Regulation of Transnational Crime Law Authority and (2) Obstacles to Institutional Synergy in Transnational Crime Law Enforcement. b) Solutions in diplomacy in law enforcement carried out by Indonesia in dealing with transnational crimes, namely the Cooperation of the National Police of the Republic of Indonesia with the International Criminal Police Organization. This cooperation for the eradication of crime is called the Mutual Legal Assistance Treaty which is established on the basis of the International Convention on Countering Transnational Organized Crime.

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