

## CONSTRUCTION OF ALTERNATIVE MODELS IN THE ERADICATION OF *ORGANIZED CRIME*

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### Abstract

Hengki Haryadi, 2023, Doctoral Study Program in Law, Diponegoro University. "Construction of Alternative Models in the Eradication of Organized Crime". This study aims to examine 1) How are the Legal Problems in Law Enforcement Against Organized Crime Applicable in Indonesia?; 2) Is the law enforcement model the solution to legal problems in law enforcement against organized crime that applies in Indonesia? The research method used is the juridical-normative method with a statutory approach and a concept approach and a case approach. The results showed that; (1) Legal problems in law enforcement against organized crime that apply in Indonesia include the following: (a) Criminal networks embedded in the web of social relations that provide the basis of trust. (b) Nature of the Crime Across national borders. (c) Involvement of Corrupt Government Officials. (d) The modus operandi and types of organized crime always develop along with advances in technology and information. (e) Requires Good Relations Between States in International Cooperation. (3) Law enforcement model the solution to legal problems in law enforcement against organized crime applicable in Indonesia is international cooperation in law enforcement against organized crime in the form of (a) Transfer of Perpetrators of Crime (Extradition / extradition). (b) Transfer of Evidence (Mutual Legal Assistance). (c) Transfer of Proceedings. (d) Transfer of Proceedings. (e) Transfer of Sentece Person (TSP)

**Keywords:** Construction, Model, Alternative, Eradication, Organized, Crime.

### A. INTRODUCTION

*Organized crime* is the most complicated crime and difficult to uncover. In this crime there are also other types of crimes such as *white collar crime*, *corporate crime* and *transnational crime* and *international crime*. The perpetrators of organized crime are certainly people who have expertise in their fields who are able to organize their respective roles, motives and tasks and functions, both before the crime is committed to the disappearance of traces after the crime is committed.<sup>1</sup>

*Organized crime* can also be classified as a *white collar crime*, if viewed from the type of perpetrator of crime. On the other hand, *organized crime* in terms of the use of methods of carrying out crimes is also possible to use means in the form of corporations that are deliberately organized in such a way as to commit crimes.<sup>2</sup> If viewed from the type of means, *organized crime* can also be classified as *corporate crime*. In addition, there is *also organized crime* which in committing crimes crosses national borders so that it is also classified as *transnational crime* or *international crime*.<sup>3</sup>

Organized crime is generally associated with the provision of illegal goods and services. These illegal goods and services are in a variety of situations: illegal, strictly regulated, or highly taxed where providers and consumers try to find legal loopholes. Organized crime is not only related to the supply of illegal goods and services, but also related to theft, robbery, fraud,

'predators', and so on. Organized crime is also associated with criminal organizations because criminal groups know each other, socialize, cooperate, and even conflict with other criminal groups.<sup>4</sup>

Organized crime can be born and developed due to people who have the same interests, motivations, and is characterized by justifying all kinds of ways to achieve goals. The problem of organized health has now become a central issue, and is no longer a state problem, but an international problem. This was proven by his discussion at the *World Ministerial Conference on Organized Transnational Crime* in Naples, Italy on November 21-23, 1994 which was attended by 138 delegates from UN member states. By holding this level conference, it shows that organized crime is a problem faced by many countries in the world with various consequences that can endanger the political, social, cultural, economic life of society and state.<sup>5</sup>

The development of organized crime in some countries first began with groups of 3 to 20 perpetrators of crime, and the operating system was limited to traditional forms. But gradually the operating system began to enter the political network of the government, among the law enforcement elite, by illegal means even though it seemed legal according to the law. With organized crime in recent times, its modus operandi has evolved from traditional forms of crime such as prostitution, illicit arms trafficking, and narcotics trafficking to more sophisticated crimes such as *money laundering*, trade in nuclear technology, human organs, environmental crimes, computer crime, banking, credit card forgery, illicit immigrant smuggling, and so on.<sup>6</sup>

Organized crime is transnational crime. The existence of transnational crime is also an implication of the natural consequences of the dynamic revolution of computer technology and the Internet, so that markets become easy in the process of transportation and communication. Especially the globalized economy so that it becomes interconnected and interdependent between countries. Consequently, it makes it easier than ever for individuals and communities to influence each other across borders.<sup>7</sup> There are two dimensions that define transnational crime: things or entities that naturally cross borders: people, goods, and information. Trafficking crimes or misuse of cross-territorial information for example.<sup>8</sup>

## B. METHODS

This research is included in the type of doctrinal research, where the approach method used is normative juridical. The study method used in this study is normative legal research, which is a study conducted by examining certain legal problems based on the implementation of applicable laws and regulations or applied to a legal case.<sup>9</sup> Research approach using a statutory approach (*statute* approach), which is an approach carried out by examining laws and regulations related to the legal issues raised.<sup>10</sup> And the conceptual approach is an approach that departs from the views and doctrines that develop in legal science.<sup>11</sup> The research source used in this study is the result of data collection carried out with *library research* data. Secondary data are then grouped into three sources of legal materials used in this study are primary legal materials, secondary legal materials, and tertiary legal materials

The research technique in this dissertation is descriptive analytical, where analysis is carried out critically using various theories of research problems. The collected data is analyzed descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic / verstelen*) scientifically

## C. DISCUSSION

### 1. *Legal Problems in Law Enforcement Against Organized Crime in Effect in Indonesia*

The current model of law enforcement against organized crime in Indonesia is that law enforcement is carried out based on the specifications and types of organized crime with the adoption of international conventions in national law.

Legal problems in law enforcement against organized crime that apply in Indonesia include the following: (a) Criminal networks are embedded in the web of social relationships that provide the basis of trust. (b) Nature of the Crime Across national borders. (c) Involvement of Corrupt Government Officials. (d) The modus operandi and types of organized crime always develop along with advances in technology and information. (e) Requires Good Relations Between Countries in International Cooperation

Transnational crime will continue to grow. These crimes involve governments, experts, the private sector, civil society for global financial gain. All criminal crimes have significant implications for individuals, communities, and countries.<sup>12</sup>

Organized crime, viewed as a particular type characterized by criminal activity, for example, with a certain degree of sophistication, continuity, and rationality in contrast to sporadic and impulsive criminal behavior. According to another view the emphasis is on 'organized', it is not so important what offenses are committed, but how they relate to each other.<sup>13</sup>

#### **a. Criminal networks are embedded in a web of social relationships that provide the basis of trust**

Transnational organized crime is how criminal networks are embedded in a web of social relationships that provide the basis of trust. Ethnicity is often mentioned in this regard as an important factor in the emergence of transnational crime networks, although it is rarely explicitly claimed that ethnic equality is not everything to form a common conspiracy. In most cases, it seems, ethnic homogeneity is a superficial characteristic of criminal networks based on family, friendship or local community relations.

The needs and benefits of cross-border networks vary across types of crime. For example, cross-border networks inherent in transnational illegal markets function, which connect suppliers and customers from different countries.

Cross-border predatory crime does not always rely on cross-border networks, although predatory crime, such as market-based crime, can be facilitated by infrastructure support in the country of operation.

## **b. The Nature of Organized Crime Across State Borders**

The need for cross-border networks also appears to depend in part on the scale of criminal ventures. Research shows a correlation between the size of smuggling shipments and size and diversity. There is evidence that there are limitations to any existing links from cross-border criminal networks. The location that serves as the 'convergence setting of performers' seems to play an important role in this. Cross-border movement of perpetrators and cross-border criminal networks are two of the three main elements of 'transnational organized criminal activity'. Nevertheless, it is not easy to identify what and who those involved in such activities are because the organization is secretive.<sup>14</sup>

## **c. Involvement of Corrupt Government Officials in *Organized Crime***

Building relationships with corrupt officials to gain impunity is advantageous although not always necessary to successfully commit transnational crimes. Corrupt relationships are not necessarily initiated by transnational actors, but also by corrupt officials who systematically blackmail criminals. In extreme cases, corrupt relationships can translate into a comprehensive support infrastructure for criminal activity. One example is provided by the West African country of Guinea-Bissau where reported Colombian drug smugglers are allowed to use military facilities for transportation and stockpiling of cocaine for Europe.

Corruption, and not only refers to petty corruption committed by public administration officers but corruption by political elites, corruption by corporations and financial institutions. Money laundering, tax evasion and other practices that make up the global financial structure that facilitate the movement of illegal money are the biggest obstacles in breaking the chain of organized crime.

## **d. The modus operandi and types of organized crime are always evolving along with advances in technology and information**

The problem of law enforcement against organized crime (*organized crime*) including the modus operandi of organized crime always develops along with advances in technology and information. The development of crime so far is not only within the territory of one country, but has also crossed the boundaries of various types of narcotics trafficking countries in Indonesia, becoming one of the crime problems included in it.<sup>15</sup>

Philip C. Jessup was the person who first introduced transnational crime, it was mentioned that, in addition to the term international law or *international law*, the term transnational law or transnational law *is also used* which is referred to as all laws that regulate all actions or events that exceed the territorial boundaries of a State.<sup>16</sup> International crime can also be referred to as a form of cross-border crime by covering four aspects, namely: *Locus delicti* in more than one country; Other countries host preparation, planning, and direction and supervision; The involvement of organized crime groups where crimes are committed in more than one country and; Serious impact on other countries.<sup>17</sup> *The United Nations Convention Against Transnational Organized Crime in Palermo in 2000 concerning Against Transnational Organized Crime states that the form of antitolerance carried out by the United Nations against*

all forms of transnational crime. In the context of countries in the Southeast Asian region, the Association of South East Asian Nations (ASEAN) has also agreed to eradicate all forms of transnational organized crime with the emergence of the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) which defines 8 (eight) forms of transnational organized crime consisting of:<sup>18</sup> *Illicit Drug Trafficking; Trafficking in Person; Sea Piracy (sea piracy); Arms Smuggling; Money Laundering; Terrorism; International Economic Crime; and Cyber Crime.*<sup>19</sup>

*Transnational Organized Crime* (TOC) is a type of crime phenomenon that crosses international borders, violates the laws of some countries or has repercussions on other countries.<sup>20</sup> One form of TOC is narcotics trafficking carried out globally. This is because the narcotics trade crosses the borders of a country, thus blurring the boundaries of a region.<sup>21</sup> The problem of narcotics trafficking can threaten the political sovereignty of a country because its activity capacity can weaken the authority and legitimacy of government in a country.<sup>22</sup>

#### **e. Requires Good Relations Between Countries in International Cooperation**

Given its transnational character that seriously challenges the existing nation-state system, a more integrated form of handling is also needed. This is the main conclusion regarding international cooperation in handling transnational organized crime. The transnational character of the criminal acts under discussion makes it impossible to deal with the issue by individual states. Agreement is needed so that countries have the same commitment and standardization in dealing with organized crime. The current international treaties are the Palermo Convention, UNCAC and the Convention on Drug Trafficking. Especially for Indonesia, it can be underlined the importance of the extradition treaty.

## **2. International Cooperation in Law Enforcement Against Organized Crime in Indonesia**

The solution to the legal problem of law enforcement against *organized crime* is through international cooperation. International cooperation can be carried out within the scope of Bilateral Cooperation, Regional Cooperation, and Multilateral Cooperation.

The form of international cooperation in law enforcement against *organized crime* is as follows.

#### **a. Transfer of Offenders (Extradition)**

Extradition comes from the Latin word "*axtradere*" (extradition-English) which means ex is out, while tradere means to give which means to surrender. This extradition term is better known or usually used especially in the transfer of criminals from a country to the requesting state,<sup>23</sup>

Extradition is a bridge that can connect two or more countries in the face of perpetrators of criminal acts that concern the interests of two or more countries. Especially for Indonesia, whose territory is located at the intersection of international traffic, it is an easy nest for perpetrators of criminal acts such as smuggling, illicit trafficking in people and labor, terrorism and others. Therefore, extradition treaties with neighboring countries and other countries, is one of the most urgent needs. Likewise, legal experts should also understand about extradition because extradition is partly a national law, especially closely related to criminal law.<sup>24</sup>

According to Law Number 1 of 1979 concerning Extradition, the definition of Extradition is a surrender by a state to a state that requests the surrender of a person suspected or convicted of committing a crime outside the territory of the surrendering state and within the jurisdiction of the territory of the state requesting the surrender, because it is authorized to try and convict him.

Extradition treaties that have been produced by the Government of Indonesia with other countries are as follows:

- a) RI – Malaysia: Act No. 9 of 1974;
- b) RI – Philippines: Act No. 10 of 1976;
- c) RI – Thailand: Law No. 2 of 1978;
- d) RI – Australia: Act No. 8 of 1994;
- e) RI-Hong Kong: Law No. 1 of 2001;
- f) RI - South Korea: Law No. 42 of 2007;
- g) RI - Singapore (signed, not yet ratified).

#### **b. Transfer of Evidence (*Mutual Legal Assistant*)**

*Mutual Legal Assistance*, which is an agreement that relies on requests for assistance relating to investigations, investigations, prosecutions, hearings before a court of law, etc., 149 from the Requested State with the Requesting State.<sup>25</sup> *Mutual Legal Assistance* (MLA) is an agreement between two foreign countries for the purpose of information and exchanging information in an effort to enforce criminal law. This assistance can take the form of examining and identifying people, places and things, transfer custodians, and provide assistance with immobilization of the tools of criminal activity.

MLA is highly recommended in various international meetings and UN Conventions, for example in the *United Nations Convention against Corruption* (UNCAC). Signatory countries are encouraged to have international cooperation, among others, in the form of MLAs to eradicate corruption. Indonesia already has a law that is the umbrella of MLA, namely Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters which has been in effect since March 3, 2006. Based on MLA agreements or on the basis of reciprocal good relations (reciprocity) of two countries.

So far, Indonesia already has several Bilateral MLA cooperation agreements with Australia, China, Korea, and the US. Meanwhile, the Multilateral MLA is summarized in the Southeast Asian regional MLA which has been signed by almost all ASEAN member countries, including Indonesia. The object of MLA is, among other things, the collection and provision of evidence. This includes statements, documents, records, identification of a person's location, execution of requests for search of evidence and seizure, search, freezing and confiscation of assets proceeds of crime, seeking consent of persons willing to testify or assist in investigations in the country requesting MLA assistance.

Indonesia already has a law that is the umbrella of MLA, namely Law No. 1 of 2006 which has been in effect since March 3, 2006. This law regulates the scope of the MLA, the Mutual Assistance Request (MAR) procedure and the sharing of the proceeds of seized criminal acts to assisting states. In addition, in Law No. 15 of 2002 concerning Money Laundering, as amended by Law No. 25 of 2003 (UUTPPU), MLA issues are also regulated in Articles 44 and 44A.

According to Law Number 1 of 2006, what is meant by Mutual Assistance in Criminal Matters is: requests for assistance to foreign countries regarding investigations, prosecutions and examinations in court hearings. The phrase "reciprocity" indicates that legal aid is provided with the expectation that there will be reciprocity of assistance under certain conditions, although not always such reciprocity is a prerequisite for the granting of assistance.

### c. Transfer of Proceedings

*Transfer of proceedings* is a new thing in the world of criminal law and because the international convention governing *the transfer of proceedings* is only one, namely *the European Convention on Transfer of Proceedings*. According to the convention, crimes that can be requested for *transfer of proceedings* are crimes that fall within the realm of criminal law. (*Transfer of proceedings Convention Article 1 letter a*).

*Transfer of Proceedings* is an alternative model or solution to legal problems in the enforcement of *organized crime*, namely through international cooperation. Considering *organized crime* can involve perpetrators of more than one country, witnesses in more than one country, and victims crossing national borders. Without international cooperation in terms of *Transfer of Proceedings*, a country will find it difficult to enforce *organized crime* if the perpetrators of crimes are more than one state.

In Indonesia itself is not yet known *Transfer of Proceedings* although these words have appeared in several laws, one of which is Law No. 1 of 2006 concerning *Mutual Legal Assistance* where article 4 states that this Law does not apply to *transfer of proceedings* (Law on Mutual Assistance No 1 of 2006, art. 4). This is very unfortunate because in accordance with the definition given by the *European Convention on Transfer of Proceedings*, *transfer of proceedings* itself is a form of cooperation in the form of mutual legal assistance so that the restrictions stipulated in this Law close the possibility of *transfer of proceedings* in Indonesia.

That the *transfer of proceedings* should be carried out in Indonesia, especially in handling *cybercrime cases*, this is based on the existing arrangements in the Electronic Information and Transaction Law (ITE) where article 43 paragraph 8 reads" (Law on Electronic Information and Transactions, "In order to uncover criminal acts of Electronic Information and Electronic Transactions, investigators can cooperate with investigators of other countries to share information and evidence." From the formulation of the article above, the words "sharing information and evidence" with investigators of other countries can be done, one of which is by transferring *proceedings* to someone who is suspected of having committed cybercrime crimes *that harm Indonesia*, *the results* of the transfer of proceedings *will later be sent to Indonesia as a reference for handling cybercrime cases* in the future.

#### **d. Transfer of Sentece Person**

Transfer of prisoners between countries, basically can be interpreted as the execution of sentences that are not carried out in the place where the verdict is read but in a place in another jurisdiction or in this case another country. Cooperation in the transfer of prisoners between countries was first echoed at *The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders* which was held in 1975.

In our constitutional law, juridically constitutional obligations of the state are regulated in Article 28I (4) of the Constitution of the Unitary State of the Republic of Indonesia Year 1945, and Article 8, as well as Article 71 of Law Number 39 of 1999 concerning Human Rights, and even the obligations of the state are added with the obligation to promote, and enforce. In relation to the obligations of these countries, it becomes relevant or even mandatory for each state to seek a *Transfer of Sentenced Persons* agreement to carry out the obligation to respect, protect, and fulfill the rights of their respective citizens, in this case citizens who are in trouble/facing the law and are serving sentences/imprisonment in other countries.

Indonesia itself is still reviewing these possibilities considering that the legal umbrella regarding *the transfer of sentenced persons* is still not regulated. In general, a legal umbrella governing the transfer of prisoners from or to foreign countries does not yet exist. Indonesian laws and regulations, especially the Criminal Code (KUHP) and the Code of Criminal Procedure (KUHAP) in principle do not recognize the decision of Foreign Judges treated in Indonesia as implied in the provisions of Article 2 of the Criminal Code, Article 1 number 8 jo number 11, Article 270 and Article 277 of the Code of Criminal Procedure.

The development occurred specifically the involvement of Indonesia as a signatory country to the *UN Convention against TOC* and the *UN Convention against Corruption* (both conventions regulate the transfer of prisoners as a form of cooperation in the field of law in criminal cases or *legal cooperation in criminal matters*), has consequences so that the Republic of Indonesia should accommodate this in Indonesian national legislation.

Transfer of Prisoners / Transfer of *Sentece Person* (TSP) is one alternative model or solution to legal problems in the enforcement of *organized crime*, namely through international cooperation.

Given that *organized crime can involve perpetrators of more than one country, witnesses in more than one country, and victims cross national borders, the Transfer of Prisoners / Transfer of Sentece Person (TSP) is needed to enforce organized crime if the perpetrators of crimes are more than one country.*

#### **e. Transfer of Asset Recovery**

The term "return of assets" contains the understanding that the control of assets by criminal offenders is not based on the basis of legitimate rights. Because it is the result of evil. Therefore, it must be returned to the 158 party who has a legitimate right to the asset, namely the state.

So, through the act of returning assets, the state takes back or returns assets that are rightfully owned by corruption perpetrators who have illegally controlled these assets.



Asset return efforts are a whole series consisting of tracing or tracing, confiscation legal remedies, and repatriation efforts, each of which requires international cooperation. In general, the stages of the asset return process can be divided into tracking, freezing, confiscating, maintaining, or managing assets in the country where the assets are located), the return of assets stolen by victims of crime (the country for corruption cases), and the maintenance of assets in the country where the assets originated.

In the case of Criminal Acts of Corruption, it can be seen from several trends in corruption behavior lately that have increased and massive, that state finances that should be intended for the welfare of the people are many, almost every day eaten by those who are not entitled to themselves and groups. The formulation of state finance used in the Corruption Crime Act is Article 1 and Article 2 of Law Number 17 of 2003 concerning State Finance or the formulation in the Corruption Eradication Law can be used and complement each other.

#### **D. CONCLUSION**

Legal problems in law enforcement against organized crime that apply in Indonesia include the following: (a) Criminal networks are embedded in the web of social relationships that provide the basis of trust. (b) Nature of the Crime Across national borders. (c) Involvement of Corrupt Government Officials. (d) The modus operandi and types of organized crime always develop along with advances in technology and information. (e) Requires Good Relations Between States in International Cooperation.

The law enforcement model solution to legal problems in law enforcement against organized crime in force in Indonesia is international cooperation in law enforcement against organized crime in the form of (a) Transfer of Perpetrators of Crime (Extradition / extradition). (b) Transfer of Evidence (Mutual Legal Assistance). (c) Transfer of Proceedings. (d) Transfer of Proceedings. (e) Transfer of Sentence Person (TSP)

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