

# TOWARD EFFECTIVE OF ASEAN MUTUAL LEGAL ASSISTANCE IN COMBATING NON- TRADITIONAL SECURITY THREAT IN SOUTHEAST ASIA REGION

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**TOWARD EFFECTIVE OF ASEAN MUTUAL LEGAL ASSISTANCE IN  
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IN SOUTHEAST ASIA REGION**

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**ABSTRACT**

**Objective:** The issue of non-traditional security is currently one of the changes in the study of international security. One of the changes is from state security to human security. The real threat to human security is transnational crime. This crime is a form of organized crime with a transnational or transnational modus operandi, form and perpetrator. Therefore, in overcoming this transnational crime, it is necessary to have coordination between law enforcers of each country by using the implementation of international law. This transactional crime is common in border areas and is increasingly complex in Southeast Asian countries.

**Methods:** This article uses a liberalism approach with a descriptive qualitative research approach (literature study) so that it can describe the phenomena that occur empirically.

**Results:** The research findings explain that the lack of domestic law enforcement in ASEAN countries causes transnational criminals to escape from domestic law and flee to other countries, causing fear of new threats in the country where they have fled. In essence, no country is able to stand alone in solving this transnational crime case. So,





multilateral cooperation between countries is needed. ASEAN, which in this case is a Southeast Asian multilateral institution, must set a strategy through MLA (Mutual Legal Assistance in criminal matters). So that with the rules governing mutual assistance cooperation in criminal matters of this transnational crime case, state policies and domestic law enforcement of a country will be more integrated.

**Keywords:** Southeast Asia, MLA, ASEAN and Transnational Crimes.

## 1 INTRODUCCIÓN

The dynamics of the international political constellation after the cold war have changed the polarization of relations between countries in the international political arena both in terms of issues and international political actors. If in the cold war countries in the world prioritize the issue of national and international security, then after the cold war the issue will begin to move towards low politics issues such as economic, social and cultural issues. The raising of non-traditional security issues in the post-Cold War international security perspective is a major phenomenon in the history of the social life of the world's people, especially related to human security issues.

Nowadays along with the development of technology and information, it has a certainly real impact and gives rise to a new structure and order. The new order creates a dimension that can certainly have implications for causing dependence. Changes in the new order consciously or not have had a great influence on the relationships established between States, life in them is mainly also a matter of security and human interaction with humans. Currently, the issue of international security is an issue and an issue that is still widely discussed and debated. However, in the process of its development, the issue of international security is not only talking about state security issues but also very closely related to human security. In addition, the concept of security itself has undergone a shift from traditional security to Non-traditional security. The traditional security meaning is often perceived in the context of relations between countries with the perspective of "How to maintain and protect the security or sovereignty of a State from the outside intervention and threat " and usually relates to military threats originating from other States. While Non-traditional security is based on two components, namely fear-free and flaw-free. In this context, the concept of Non-traditional security is associated with cases





of transnational crimes that are crimes that violate the values of decency and humanity. In essence Transnational Crimes are acts related to crimes with financial motives, which have an impact on the interests of more than one state that occur in a cross-border complex of the State which gives unrest to society.

According to G.O.W. Mueller explained "Transnational Crime is a juridical term that studies the science of crime, created by the United Nations in the field of crime prevention and criminal justice in identifying certain legal phenomena that go beyond international borders or borders, violate domestic law, and can have an impact on the legal regulation of other States". The term Transnational crime is a form of development of the characteristics of a contemporary form of crime called Organized Crime. The term is used as an explanation of the correlation between crimes that go beyond the territorial boundaries of the State and also have an impact on the laws of various States.(Olii, 2005)

As a brief review, it is previously known that there is a Transnational Criminal network that has raked in tens of billions of US dollars per year through various types of criminal activities such as smuggling of counterfeit goods, narcotics trafficking or the sale of illegal drugs, human trafficking and wildlife trade. In that context, transnational crimes are so very detrimental, the threat posed greatly affects the sovereignty of a State. Sometimes the operational role in a country is not necessarily able to solve this problem comprehensively, although there are several regulations governing each State, but this is not considered optimal enough and also well realized, especially if a country cannot handle these threats and problems personally, especially if a country cannot handle these threats and problems personally, especially if a country cannot handle these threats personally, also law enforcement procedures against international crimes including issues involving multilateral threats cannot be carried out by the practice of international law in extradition (having diplomatic relations and jurisdiction between the recipient state and the requesting state).

But it uses a form of cooperation between countries in the practice of customary international law obtained from Mutual Legal Assistance Treaties (MLATs). This form of cooperation contains solidarity in the practice of eradicating transnational international crimes and mitigating international crimes that have been agreed as an act of implementing agreements carried out among the countries involved. Of course, this



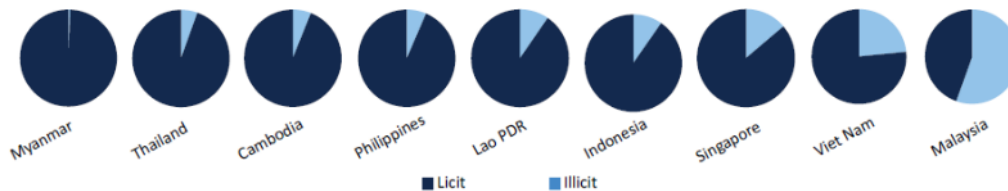


agreement respects jurisdiction and relies on the provisions of the national laws of participating countries, but regulations and actions are needed to coordinate national activities so that they are increasingly in line with the development of cross-border or international crimes.

In addition, law enforcement also needs to be carried out through mutual cooperation, especially in ASEAN countries. Because in preventing and eradicating transnational crimes cannot be done simply by putting its regulations in international conventions and treaties but rather multilateral physical cooperation.

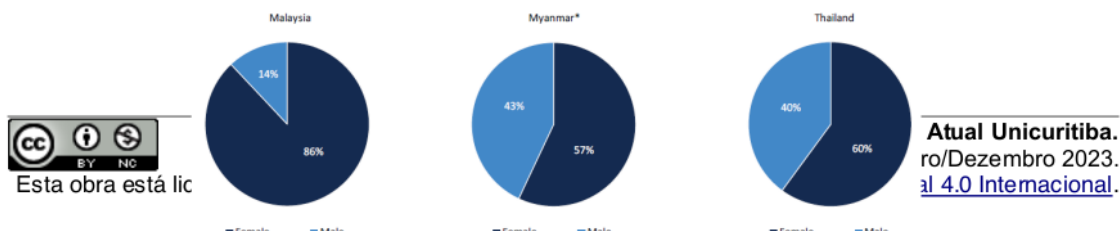
Therefore, with the arrangement of the MLA (*Mutual Legal Assistance*) concept, it is hoped that there will be a regional cooperation between southeast Asian regional countries that are also members of an Association / Organization called ASEAN to eradicate or at least slightly reduce transnational crimes that occur. Because based on research <sup>2</sup> that the Southeast Asian region is a very strategic region when viewed from its location surrounded by developing countries. And this is what is likely to make this area a path in carrying out criminal actions carried out by transnational crimes referring to the following data:

Figure 1. Percentage of smuggling of counterfeit goods



Southeast Asia is the global counterfeit goods hub of counterfeit goods supply chain and illegal tobacco.(UNODC, 2019)

Figure 2. Percentage of Woman Traficking



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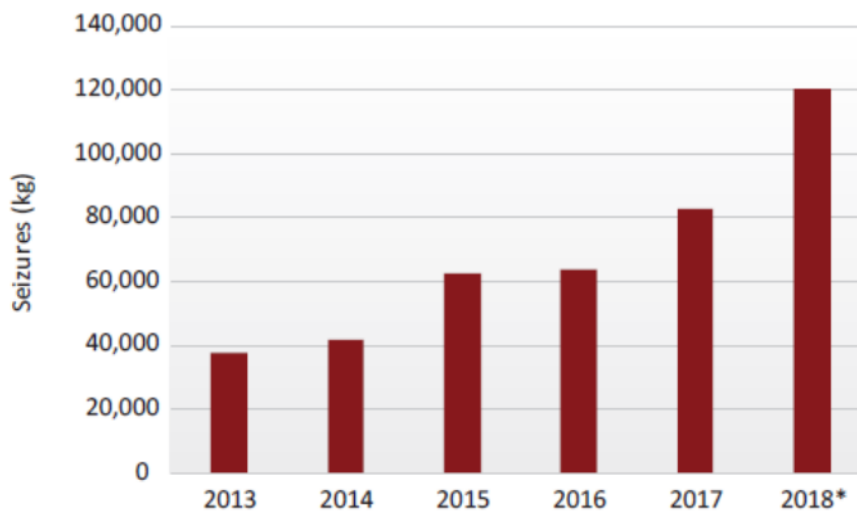
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Every year thousands of women and child who suffer from poverty or have no chance of working fall into the hands of intra-regional human trafficking syndicates. These women are traded to supply the sex industry in Thailand, Malaysia, Indonesia and the Philippines. (Le Nguyen, 2012)

Figure 3. Confiscation of all forms of methamphetamine in Southeast Asia, 2013-2018

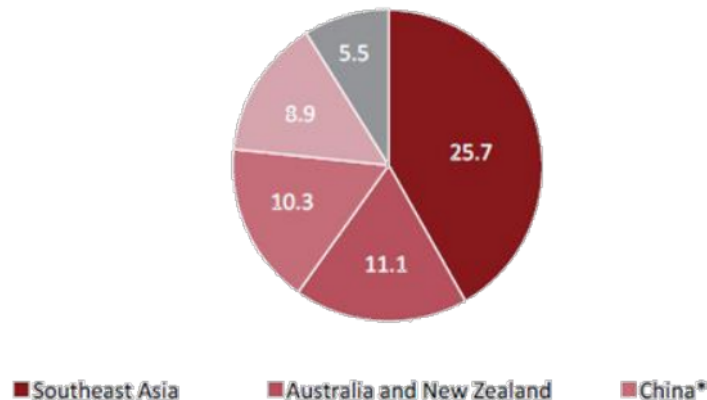


Five ASEAN countries (Cambodia, Laos, Myanmar and Thailand) are recognized as one of the world's major locations for the production of amphetamine-type heroin and stumulanes. The terlarag drug produced in Southeast Asia is Opium. One of the largest opium producing countries is Myanmar. Drug trafficking involves a golden triangle area that is then smuggled to Asian or European destinations. At the time of writing, full-year drug seizure data is reported and provided by Brunei Darussalam, Cambodia, Indonesia, Japan, Lao PDR, Malaysia, Myanmar, philippines, Singapore, Thailand, and Vietnam which are the countries of the Southeast Asian region.





Figure 4. Estimated retail size of the methamphetamine market in Southeast Asia, Australia, New Zealand and Bangladesh, and China.



Sumber : (UNODC, 2019)

Some of classification transnational organized crime in Southeast Asia Region are happened in some area countries, likes:

Table 1. Classification of Transnational Organized Crime

No	Status	Description
1	Money laundering	An increase in the number of incidents of smuggling of large amounts of money in several ASEAN countries. Over the past few years, Thai authorities have reportedly seized large sums of cash from smuggling neighboring countries, and reports of cash smuggling from couriers from Cambodia, Laos and Myanmar Criminal groups with networks in Southeast Asia are also known to launder large amounts of money through the banking system. formally in Singapore and Hong Kong, China, because of their openness as an international financial and transportation center.
2	Casino	As of January 2019, there are 230 licensed casinos in Southeast Asia, including 150 Casinos in Cambodia, 67 in the Philippines, and 5 in Laos and Myanmar. Many of these casinos emerged after the crackdown on money laundering





		activities in Macau, China in 2014. This raises concerns that the "move" from criminal activities related to casinos has been taken over in Southeast Asia, especially to the Mekong region which does not have supervision of regulations and enforcement capacity.
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And there are many other types of transnational crimes that occur in the Southeast Asian region. So this requires the sensitivity of each ASEAN region country to cooperate with each other in tackling these crimes. One of them is to use MLA. In its sense, MLA (*Mutual Legal Assistance*) itself or referred to as mutual assistance is a mechanism to provide legal assistance based on formal legal basic methods. Usually in the form of collecting and submitting evidence carried out by an authority / legal mediator in another country in response to a request for assistance. Referring to these descriptions and explanations, the author hereby focuses on researching the discussion entitled "Toward Effective of Asean Mutual Legal Assistance in Combating Non-Traditional Security Threat in Southeast Asia Region"

## 2 RESEARCH METHODS

The research method used in writing this paper is the study of literature which is a series of activities relating to qualitative descriptive methods where this method focuses on library data collection techniques, literature review, reading, and processing information and research material. The main types of references used in the study of literature are books, journals and scientific articles. The data is used as a basis for analyzing and explaining the problem in a discussion. In this scientific work the writer uses the perspective of Liberalism, which explains that cooperation is one of the best ways to solve a problem or an existing problem. And can straighten the gap that occurs between countries that have a dispute. The data analysis technique is in the form of argumentative descriptive based on ideas in seeing the phenomena that occur around. While the level of analysis used is the level of analysis between States (State-level analysis) which examines each scale of research variables and the State's behavior in several internal







and external factors of the State when playing a role in foreign policy making and solving problems.

### 3 RESULT AND DISCUSSION

The dynamics of changing the concept of security from state security to human security certainly has an impact on changing issues and themes in the international political arena. One form of fundamental change in the international security approach is the very high focus of transnational community interaction supported by technological advances so that the threat today is no longer military and war but rather non-military or humanitarian. Therefore, this dynamic results in changes in human lifestyles which are oriented to needs and ultimately have an impact on the complex implications of interdependence and integration.

High mobility between countries has resulted in the waning of national borders and state authority so that this has an impact on the high number of interactions between people that are cross-country in nature so that new problems arise, one of which is the opportunity for transnational crime or commonly called transnational crime. These various forms of transnational crime in their development have a massive impact and are able to destroy the political stability and security of a country. Technological advances increase the intensity of relations and interdependence of countries in the World. The greater the level of dependency, the more encouraging mutual trust in completing the trumpet and triggering international cooperation that can be formulated in an international agreement. Differences in philosophy, perception, outlook on life, race, religion or belief, as well as culture, are no longer a barrier factor in a relationship and cooperation. Progress in the field of science and technology has led to the need for a regulation and rules that are more strict and certain and widespread, so that this is well outlined in international agreements. (I Wayan Pathiana, 2002, p. 2)

In international world today's, new problems often come to the fore and always result in conflicts between countries. The conflict not only arises due to a misfortune caused by the State, but is also carried out by criminal groups. Although there are already





several regulations related to law enforcement in a country to eradicate and stop the operational activities of criminal group networks, unfortunately it is still considered not too optimal.

### 3.1 MUTUAL LEGAL ASSISTANCE IN RESPONSE TO THE DYNAMICS OF CRIME

Crimes developed along with the development of human civilization. This is seen from the significant development seen from the perpetrator, the modus operandi and the consequences it causes. Crime with conventional weapons was replaced with sophisticated modern tools. Individual criminals turn into organized groups/syndicates.

The era of globalization supported by advances in science and technology in the fields of telecommunications and transportation is increasingly sophisticated. Meanwhile, this sophistication provides positive benefits and negative impacts as well as due to the influence on the development of crime. The transfer of criminals from one country to another is easily carried out because it has a network of crime syndicates in different parts of the world.

There is a type of crime that develops as a result of the development of technology and information but has far involved international networks supported by sophisticated infrastructure. This crime is called Transnational Crime. This transnational organized crime is like examples: human crime, Money *Loundering*, smuggling of goods, drugs and illegal drugs, and other crimes involving the existence of criminal networks.

To anticipate and overcome crimes called *Transnational Crime*, one of the cooperations emerged in the form of agreements and laws called Mutual Legal Assistance in Criminal Matters (MLA). As the theoretical conception states Mutual Legal Assistance is an international cooperation mechanism related to investigations, prosecutions, and examinations at court hearings based on the provisions of the regulations and laws of the requested country.

The ASEAN community has the motto One Vision, One Identity and One community which means that in terms of security, ASEAN countries must have the same vision and mission to combat criminal cases that anchor the country's security and economic stability. So, through ASEAN, countries are expected to be able to discuss the





problems that occur. The problems faced by the ASEAN security regime can be analyzed from two aspects, namely the negotiation process at the international level and the negotiation process at the national level. Negotiations at the international level refer more to the activities of creating a negotiating regime at the ASEAN level that emphasizes more on the interests of ASEAN member states in drafting agreements on the handling of transnational crimes. Meanwhile, in the negotiation process at the national level, it refers more to the ratification of international legal products by ASEAN countries in following the results of international legal product agreements in dealing with transnational crimes which are used as a framework for law enforcement in ASEAN. (Prayuda, Warsito, & Surwandono, 2020)

### 3.2 MUTUAL LEGAL ASSISTANCE AS A JOINT FORM OF DEALING WITH TRANSNATIONAL CRIME

Transnational criminal acts result in legal problems arising in one country with another in the ASEAN region. So that in overcoming and eradicating it is difficult to do without cooperation and harmonization of bilateral or multilateral policies between countries, especially in the Southeast Asian region. Therefore, the best way to overcome it is to carry out good diplomatic relations and cooperation between members of the Asian State Teggara in order to provide assistance for the resolution of cross-border criminal problems based on the laws of each Country itself.

ASEAN cooperation under the agreement has been implemented through multilateral conventions such as the United Nations Convention Against Corruption (UNCAC). Meanwhile, cooperation carried out without conventions, namely using the provisions of mutual assistance for both crimes /crimes and criminals in each country has not been carried out much.

This division of types of crimes shows that not every crime needs to be legal and addressed through Mutual Legal Assistance (MLA), only certain crimes that have cross-border dimensions or measures (International) and have a *Double Criminality*. The purpose of this dual principle is when a crime is made a criminal act according to the legal system of each State (requester and requested) but according to the law the criminal act







will only arise and be recognized for where the criminal act was committed (one State (requester or requested)).

<sup>12</sup> As for the other explanation, The double criminality/double principle can be judged that the offence is considered a punishable offence in the requested State only if the constituent elements of the offence in both States correspond to each other, the offence shall be deemed extraditable or using the MLA. (International & Criminal, n.d.)

Because of the difficulty in overcoming this principle of double crime, the conventions made by states must be of an international cooperation nature, and this will be felt to be more effective. Therefore, states will find it easier to eradicate international crimes if they are more inclined to make cooperation in the form of international conventions in international organizations. Assessed in this analysis, southeast Asian countries should use multilateral/regional authorities within ASEAN to streamline efforts to eradicate transnational crimes including the possibility of making an extradition agreement between ASEAN member states and making ASEAN a *Plan Of Action to Combat Transnational Crime* as an alternative instrument for the Southeast Asian country. In addition, to create regional strategies to monitor, prevent and minimize transnational crime. With this strategy, ASEAN is able to investigate, detain, prosecute and even rehabilitate perpetrators/syndicates of transnational crimes in the Southeast Asian region.

And to answer ASEAN's the problems in tackling transnational crimes, namely by strengthening regional capacities and capabilities, increasing cooperation between ASEAN security forces, in this case developing multilateral aspects, then also developing activity programs that include the exchange of information on smuggling or criminal escape between countries, agreeing on the formation of a multilateral body, then also developing a program of activities that include the exchange of information on smuggling or criminal escape between countries, agreeing on the formation of a multilateral body eradicate Transnational Crimes such as *ASEAN (Center for Combating Transnational Crimes)* and establish regional agreements with criminal courts including MLA (Mutual Legal Assistance) and Extradition Cooperation.

Because MLA is one of the latest law enforcement processes that involves not only one country but many countries, especially in the ASEAN region. This mutual assistance





must be based on the same spirit to combat criminal crimes even those that occur in other countries by providing various kinds of assistance requested by that country.

Asean region countries already have international cooperation relations with other countries' law enforcement agencies formally which are often called Agency to Agency cooperation networks, as for example the Interpol Asset Recovery Inter-Agency Network Asia Pacific and so on. This will certainly strengthen the mutual assistance needed by ASEAN countries to tackle transnational crime by obtaining valid evidence and data before the courts. Following up on valid evidence and data can be through mutual legal assistance cooperation as an informal request. The condition is that the requesting country must have complete evidence and data starting from investigations and investigations to strengthen investigations to arrest criminals, this is intended so that the requested state is willing to assist optimally in providing mutual assistance. So, it can be said that Mutual Legal Assistance plays an important role in efforts to prevent and eradicate transnational crime as an alternative solution to present evidence. Not only that, but in this context, witnesses who are in different countries can be present at a trial.

### 3.3 MUTUAL LEGAL ASSISTANCE AS A SOLUTION TO DIFFERENCES IN LEGAL SYSTEMS

In essence, law enforcement formulations have spread and influenced the routes used by these criminal groups, but other findings suggest that there are syndicates that are improving their networks by trying to divert attention to less protected and under-surveillance zones. Often cross-border criminals who want to be tried in two countries want the absolute use of their own legal system, this certainly makes the handling of criminal acts complicated.

The same report also highlighted that organized crime could take advantage of several private companies, such as casino operations that managed to rake in billions of dollars in money in the region, and easily carry out money laundering on a wide scale. Transnational organized crime groups like this legalize all means to increase the rapid flow of their business by selling drugs and people, as well as other commodities.







For this reason, in order for organized crime to be overcome immediately, the governments of each State should have begun to develop plans and implement strategies that are firm, serious and have a goal orientation in solving problems. The response could be cooperation as a way of law enforcement to address problems in cross-border areas, this will also be in dire need of help and encouragement from *stakeholders* and political aspects by the government and its highest ranks. Transnational or transnational organized crime in Southeast Asia, with all its activities such as trafficking in narcotics, people, counterfeit goods, and even environmental crimes has spread and increased dramatically. Therefore, it is necessary to have authority as a way and alternative that can call on all countries in the Southeast Asian region to start cooperation with each other in overcoming these crimes. Weak law enforcement efforts in a number of Southeast Asian countries have made it possible for organized crime groups to increase their operations in locations where there is no law enforcement, especially such as border areas. One of the authorities to tackle transnational crime in the ASEAN region is the establishment of Mutual Legal Assistance.

The establishment of the MLA was motivated by the factual condition that there were differences in the criminal law system between several ASEAN countries causing inaction in the examination of crimes. The difference between the state legal system that adheres to the criminal justice system and the Due Process Model, while on the other hand it adheres to the *Crime Control Model system*. The Due Process Model is a legal system that focuses on the protection of human rights for suspected crimes, causing a long bureaucracy in criminal justice. Meanwhile, the Crime Control Model emphasizes the effectiveness and efficiency of criminal justice based on the principle of presumption of innocence. On the other hand, the legal system is also based on the term dual criminality. In addition, diplomatic constraints are also a significant factor for the obstruction of handling transnational crimes, of course, because this condition concerns the sovereignty of a country that must always be respected. So that from the differences in the legal system, Mutual Legal Assistance (MLA) is present as a solution in the form of cooperation between countries or the formation of regulations (laws) for countries that want to regulate it. MLA can also regulate the condition of countries that do not yet have an agreement, so





this mutual assistance can be carried out according to <sup>13</sup> the principle of reciprocity or good relations between <sup>16</sup> of two countries.

This is also regulated in international provisions such as the United Nations Convention Against Corruption (UNCAC) and the United Nations Convention Against Transnational Organized Crime (UNTOC) which explain that legal cooperation between countries in criminal matters must be based on several general legal principles, which is:

- a. Sufficiency of Evidence explains about making requests for mutual assistance especially in matters of transnational criminal and criminal offences, the preparation of sufficient evidence being the primary requirement for success in requests for mutual assistance.
- b. Dual Criminality, explains the legal principle that provides that a person's actions, in cases that are the subject of a request for mutual assistance for crimes of crimes to other countries, are acceptable if a crime is committed both in both countries and the punishment can be carried out in two countries as well (the recipient and the requester).
- c. Reciprocity, explained that <sup>11</sup> mutual assistance cooperation in the problem of transnational criminal crimes can be carried out because of agreements between countries, both requesting countries and recipient countries.

In fact, the implementation of the Principle of Reciprocity does not require an agreement (*Treaty*) but is sufficient with the regulations (*Arrangement*) which hereby only apply based on the aspect of "*On Case-by-Case Basis*". The smoothness of this regulation requires only a factor in the provisions that assert that *the "Non-treaty Based"* procedure may be incorporated into the statute.

Because basically Mutual Legal Assistance does not always have to talk about the alignment of the existing legal system, but this sense of mutual need for information is what ASEAN countries must put forward as the motto one Vision, One Identity and One community.

Interesting things are precisely the main focus in ASEAN to achieve the political authority of the will of cooperation towards the integrity of a safe ASEAN society. The





reason until this writing is that ASEAN still has not achieved its intended security target. To study it further, it can be seen from the following analysis:

### 3.3.1 ASEAN Weakness Analysis

Geopolitically, the Southeast Asian region is a world trajectory that has a very important strategic significance. The Southeast Asian region is rich in natural resources and energy strategically vital for shipping and military bases. (Salamah, 2017) However, countries in Southeast Asia both nationally and internationally still experience some problems related to threats to national stability and security. And the implementation of regional mechanisms in ASEAN to solve these problems has not been implemented. It can be seen from each country that only relies on the bilateral route pattern not through a regional mechanism that is generally applicable to all ASEAN members.

ASEAN members are late in engaging in the identity of regional multilateral military and defense diplomacy, as it is seen from crime groups that have historically had syndicates in various regions of the region. Government officials, however, do not meet multilaterally in an inclusive dialogue, in many cases institutions only protect internal and external threats, manage violence and discuss them, but do not directly deal with external cases involving such syndicates. (*Structures, Shocks and the Late Rise of Asia's Norm Change: Explaining Defence Diplomacy*, 2017)

Then, in terms of the implementation of the ASEAN mechanism, the problem that arises is, a mechanism that is close to the ASEAN Way norm which refers to the code of conduct in relations between ASEAN member states. ASEAN Way is a principle in carrying out cooperation in a harmonious, mutual respect for sovereignty, non-confrontational, *non-legalistic* and pragmatic. (Yuniarti, 2010)

Basically, with the concept of *sovereignty* of a country, it cannot be done without the coordination and legal assistance of the destination country. In the absence of effective treaties related to extradition and Mutual Legal Assistance (MLA), some countries have engaged in unilateral action. But this is a violation of International Law. According to universally accepted principles, states enjoy equality of sovereignty and territorial integrity, with this view states assume that other States or even international







organizations should not interfere in the internal affairs of the state. (International & Criminal, n.d.)

To see that in the Southeast Asian region itself, the application of the principle of non-intervention that is very rigid by ASEAN has resulted in countries having a misguided view of self-integrity. Asean's international personality and integrity level are also very weak compared to other regional organizations. ASEAN has *The High Council* to resolve international disputes between its members, but it has never been used once. (Pendahuluan, n.d.)

In addition, the existence of legal problems between states will cause little chance of a person having to undergo criminal justice proceedings outside the area or region concerned. Some of the actual cases that occur today, for example, such as corruption suspects who fled abroad and assets from corruption that are abroad are challenges for law enforcement officials to be able to arrest suspects or convicts outside the jurisdiction of the judicial system while returning assets from corruption. The emergence of crimes that have an international dimension will increase both quantitatively and qualitatively. The resolution of these crimes is not enough to be carried out only by the State personally or individually, but it requires integrated cooperation both multilaterally. One of the legal institutions that is seen as being able to overcome this crime of international dimension is ASEAN itself in ratifying extradition treaties in each country. (Parhiana, Wayan, 2004, p.127).

### 3.3.2 Opportunity Analysis in Answering ASEAN Problems

Law enforcement procedures against international and transnational crimes are issues that are included in the development of multilateral cooperation between states. This cooperation is guided in preventing and eradicating international crimes. One example of law enforcement that has been carried out in this cooperative model is the practice of extradition law.

- a. There is a common political interest (*Mutual Interest*) between the States.
- b. There are mutual *advantages* when cooperating.





- c. There are similarities in goals (*Mutual Goals*)
- d. Respect for the principle of "State Sovereignty" between states that cooperate.

Extradition herein can also be interpreted as a pattern of <sup>14</sup>surrender by a state at the request of another person in its jurisdiction who is accused or has been convicted of a crime committed in the jurisdiction of the applicant. (Joshua et al., 2016) This enigma is carried out formally and legally based on a pre-signed extradition treaty.

This agreement is a principle of mutual cooperation on the basis of the good relations of a State in which a person <sup>13</sup>accused of a crime (Suspect, Defendant, Accused) or someone who has been sentenced to a criminal sentence. This accusation certainly has a definite binding force (Convicted and Convicted), by its place of residence (Requested State) to the State that has provisions or jurisdictions to punish and or try it (the Requesting State), through a request from the requesting State, to try and carry out the sentencing process. As for some elements of extradition based on the foregoing, as follows:

- a. Subject elements, namely the requested country and the requesting country/country;
- b. Element of the object, namely the person requested, who can have the status of a suspect, accused, defendant or convicted person;
- c. Elements of procedures or ordinances, that is, they must be carried out according to certain procedures or ordinances or formalities, and
- d. The element of purpose, that is, for the purpose of adjudicating and or punishing it.(Beare & Williams, 2013)

Requests for submissions must be made diplomatically. It is the same when the State approves or rejects the requesting State' request. This must also be conveyed to the requesting State through diplomatic channels.

Besides, Extradition. There are opportunities that can be focused on resolving Southeast Asian transnational crime disputes through <sup>17</sup>mutual assistance in criminal matters or MLA (*Mutual Legal Assistance*). This mutual assistance is considered <sup>15</sup>to be







able to overcome and overcome the problem of transnational or international crimes to replace the problem due to the ineffective implementation of extradition treaties that have been ratified and carried out between the countries involved in it. In fact, the opportunity obtained by ASEAN with the establishment of Mutual Legal Assistance is the ease of exchanging information on transnational crime cases and becoming a solution when extradition cannot run. Because it is necessary to know that the use of Extradition institutions has weaknesses, including: 1) Differences in the national legal system, both substantive and objective law, 2) the organizational structure of the government of the country involved in the agreement, 3) the convoluted mechanism for its implementation.

Through this Mutual Legal Assistance, the phrase "Reciprocity" indicates that such legal assistance is provided in the expectation that there will be reciprocal assistance under certain conditions. This means that there is tolerance to help other States that have originally helped. When a country makes a request to another country in order to freeze assets, or obtains evidence for prosecution or an order of freezing and confiscation, then a formal letter requesting legal aid must first be prepared containing a list of questions and actions to be carried out, and then sent to the authorized institution to the country where the request was made. In order for the mutual legal assistance to be effective in terms of tracking, freezing, confiscating, confiscating and returning assets that should have been based on international conventions or treaties that allow for mutual legal assistance to occur. For this purpose, encourage countries to bind themselves to a treaty and/or enter into a regional or bilateral agreement.

MLA or Mutual Legal Assistance is a form of agreement between States that regulates efforts to overcome the problem of transnational crime that is currently rampant. In addition, the MLA is a bilateral "soft" cooperation agreement that provides protocols and structures for voluntary coordination but not for stealing classified information; In summary the MLA is like the cooperation of "prosecutor to prosecutor" or "police to police" that allows some intelligence to share duties but not conduct forced investigations. The MLA is based on the mission of investigating serious crimes in criminal law on a transnational as well as international scale. (Joshua et al., 2016) MLA/ mutual assistance in the investigation or prosecution of criminal charges is generally used to obtain material





that cannot be obtained on the basis of police cooperation, in particular investigations that require coercive means. (James & Gladyshev, 2016)

## 4 CONCLUSION

The binding force of the MLA concept is based on the variable needs of the agreement in meeting an interest need in each Southeast Asian region Country, namely, among others: This MLA is a guideline for ASEAN member states in carrying out cooperation to maintain security in their regions through mutual assistance among ASEAN Countries, also based on this agreement is carried out in order to develop law enforcement effectiveness in addressing problems prevention, investment, arrest and prosecution of assets in the criminal field. ASEAN as one of the regional organizations that must be able to accept the times, including the development of crime across national borders that is getting bigger. Regarding this, the process of forming a pattern of regional agreements is one of the solutions to eradicate and eradicate transnational crimes in order to create security and order in the regional region of the Southeast Asian region itself.

## REFERENCES

Akbar, Dhani, et al. "Community preparedness on transboundary oil spill governance in Bintan Island." *Journal of Physics: Conference Series*. Vol. 1655. No. 1. IOP Publishing, 2020.

Beare, M., & Williams, R. D. (2013). Mutual Legal Assistance Treaties. *Encyclopedia of Transnational Crime & Justice*, 103–110. <https://doi.org/10.4135/9781452218588.n105>

Devitasari, I. (2015). Kekuatan Mengikat Asean Mutual Legal Assistance Treaty (Amlat) Bagi Negara Anggota Asean Dalam Rangka Penegakan Hukum Kejatan Transnasional. *Belli Ac Pacis*, 1(1), 25-33.

Indriati, N. (2009). Mutual Legal Assistance Treaties (MLATs) Sebagai Instrumen Pemberantasan Kejahatan Internasional. *Jurnal Dinamika Hukum*, 9(2), 125-134.

International, T. O. F., & Criminal, C. I. N. (n.d.). *INTERNATIONAL COOPERATION AGAINST TRANSNATIONAL ORGANIZED CRIME: EXTRADITION AND MUTUAL*





LEGAL ASSISTANCE IN CRIMINAL MATTERS. 364–393.

James, J. I., & Gladyshev, P. (2016). A survey of mutual legal assistance involving digital evidence. *Digital Investigation*, 18, 23–32. <https://doi.org/10.1016/j.diin.2016.06.004>

Jurnal Hukum Internasional. Indonesia Journal of International Law – Treaties. Volume 3 Nomor 4 Oktober 2006;

Joshua, J. M., Camesasca, P. D., Jung, Y., Antitrust, S., Journal, L., & Camesasca, D. (2016). *EXTRADITION AND MUTUAL LEGAL ASSISTANCE TREATIES: CARTEL ENFORCEMENT 'S GLOBAL REACH* All use subject to JSTOR Terms and Conditions *EXTRADITION AND MUTUAL LEGAL ASSISTANCE TREATIES: CARTEL ENFORCEMENT 'S GLOBAL REACH*. 75(2), 353–397.

Le Nguyen, C. (2012). Towards the effective ASEAN mutual legal assistance in combating money laundering. *Journal of Money Laundering Control*, 15(4), 383–395. <https://doi.org/10.1108/13685201211265971>

Olii, M. I. (2005). Sempitnya dunia, luasnya kejahatan? sebuah telaah ringkas tentang transnational crime. *Kriminologi Indonesia*, 4(1), 14–27.

Pendahuluan, A. (n.d.). *Efektivitas Piagam Asean ( Asean Charter ) Bagi Asean*. 1–14.

Prayuda, R., Warsito, T., & Surwandono. (2020). the Problematics of Association Southeast Asia Nation Within Handling Transnational Crime Smuggling Drug Trafficking. *Humanities & Social Sciences Reviews*, 8(1), 844–855. <https://doi.org/10.18510/hssr.2020.81101>

Prayuda, R., Warsito, T. and , S. (2021), "Problems faced by ASEAN in dealing with transnational drug smuggling in Southeast Asia region", *Foresight*, Vol. 23 No. 3, pp. 353-366. <https://doi.org/10.1108/FS-12-2019-0106>.

Prayuda, R., Syafrinaldi, Akbar, D, Nurman, Sary, D.V. (2022). Development of Penyengat Island area as an international tourism area based on heritage tourism. *International Journal of Sustainable Development and Planning*, Vol. 17, No. 4, pp. 1367-1371. <https://doi.org/10.18280/ijstdp.170434>

Prayuda, R., Warsito, T., & Surwandono, S. (2019). Narcotics Smuggling Routes in the Southeast Asia Region (Case Study in the Riau Province, Indonesia). *Security Dimensions: International & National Studies*, 30, 116-133.

Prayudaa, R., Shiddiqyb, M. A. A., Sundaric, R., & Handokod, T. (2019). Constructions of the Norms and Values of ASEAN towards Drug Trafficking in Southeast Asia. *Constructions*, 10(3).

Salamah, L. (2017). Analisa Strengths, Weaknesses, Opprotunities, and Threats (SWOT): Peluang dan tantangan Association of Southeast Asian Nations (ASEAN) dalam mewujudkan integrasi Asia Tenggara. *Masyarakat, Kebudayaan Dan Politik*, 30(3), 300.





<https://doi.org/10.20473/mkp.v30i32017.300-310>

Sulaeman, S. (2015). Efektifitas Bantuan Timbal Balik dalam Masalah Pidana (Mutual Legal Assistance in Criminal Matters) Studi Kasus Pemulangan Koruptor Yang Melarikan Diri Keluar Negeri (Doctoral dissertation, Universitas Islam Negeri Alauddin Makassar).

*Structures , Shocks and the Late Rise of Asia ' s Norm Change : Explainin Defence Diplomacy.* (2017). 35(1), 1–26. <https://doi.org/10.1355/cs35-la>

UNODC. (2019). *Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact.*

Yuniarti, A. (2010). Implementasi Mekanisme Regional ASEAN dalam Penanggulangan Masalah Terorisme di Asia Tenggara. *Jurnal Diplomasi Dan Keamanan 2* (1), 1–24.

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