



Prospects of Implementing Mutual Legal Assistance Against Transnational Tax Crimes (Study of Reciprocal Agreements between Indonesia - Switzerland)

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ABSTRACT

This study aims to determine and understand the visibility of implementing a reciprocal agreement between Indonesia and Switzerland in the field of Tax Crimes and the steps that the two countries can take to optimize the role of the treaty. The method used in this research is the normative juridical method using secondary data with a statutory approach. This research uses descriptive-evaluative analysis. The results of this study indicate that the prospect of implementing a reciprocal agreement between Indonesia and Switzerland in the field of tax crimes could be an opening for mutual legal aid cooperation with other European countries. This agreement helps Indonesia return the country's wealth that was taken abroad by individuals who misuse state finances, especially in the field of taxation. The steps that can be taken by the two countries to optimize the role of the agreement are to mutually ratify and implement it into their respective national laws, currently Indonesia has ratified it through Law Number 5 of 2020 concerning Ratification of the Joint Legal Aid Agreement in Criminal Matters between the Republic of Indonesia and the Swiss Confederation, however, the ratification stage alone is not sufficient for a country that adheres to the dualism theory. Indonesia itself has not been consistent in implementing international agreements into national law. Indonesia must also have law enforcement officers who are reliable and have a global perspective, as well as the willingness to budget so that what has been promised can run as it should.

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1. Introduction

Indonesia and Switzerland signed a Mutual Legal Assistance (MLA) Agreement on 4 February 2019 which has currently ratified through law number 5 of 2020.¹ The focus that is mostly highlighted is related to points of agreement regarding the tracking, freezing, confiscation and confiscation of assets resulting from criminal acts. In Indonesia itself, mutual assistance in criminal cases has various scopes. Some of them are as stated in Article 3

¹ See Undang-Undang Republik Indonesia Nomor 5 Tahun 2020, available at https://jdih.setkab.go.id/PUUdoc/176211/UU_Nomor_5_Tahun_2020.pdf.

paragraph (2) of Law number 1 of 2006 concerning Reciprocal Assistance, namely that assistance in criminal matters in the form of investigation and prosecution or related proceedings for any crime that can be convicted when submitting a request for assistance is based on the jurisdiction of the competent authority in the country requesting assistance, including crimes related to taxes, customs, currency exchange supervision or other income issues but does not cover issues unrelated to the process of the event.

In addition, assistance must include taking tools/evidence or statements from people; Providing information, documents, records and evidence; Location or identification of people or goods; Submission of documents; Execution of requests for investigation and confiscation; Make arrangements for persons who testify or assist in criminal investigations, prosecutions or proceedings in the requesting country; Search, temporary detention, confiscation and confiscation resulting from criminal activities resulting from assisting crimes; Other assistance is also required by the requesting country and does not conflict with the agreement or the laws of the country being requested for assistance.²

Although the signing of the MLA agreement between Indonesia and Switzerland is considered a diplomatic success, given that Switzerland is the largest financial center in Europe and is known for its secrecy and highly guarded banking security system. However, some groups still respond to the MLA between Indonesia and Switzerland with a pessimistic tone. Apart from being deemed not having a good implementing apparatus, this agreement is also considered new and has no evidence of its impact. One of the sectors that is being encouraged to do well is the handling of tax crimes (tax fraud) as part of the government's efforts to enforce tax laws, especially those that cross-national borders.

Therefore, this research will examine the visibility of the implementation of reciprocal agreements between Indonesia and Switzerland in the field of Tax Crimes and discuss the steps that can be taken by the two countries to optimize the role of the agreement. Based on the background of the problem, in this study several problem formulations can be drawn, namely What are the prospects for implementing a reciprocal agreement between Indonesia and Switzerland in the field of tax crimes? and What steps can the two countries take to optimize the role of the treaty?

2. Method

The method used in this research is the normative juridical method using secondary data with a statutory approach. This research uses descriptive-evaluative analysis. This analysis aims to describe the existing conditions and existing regulations, then evaluate based on needs through determined approaches to determine the right policy steps in the future. The focus of this research is the visibility of implementing a reciprocal agreement between

² Article 3 (2) Law number 1 of 2006.

Indonesia and Switzerland in the field of Tax Crimes and the steps that the two countries can take to optimize the role of the treaty.³

3. Prospects of Implementing Reciprocal Agreements between Indonesia and Switzerland in the Field of Tax Crimes

The United Nations in 1995 gave a description of 18 types of crimes categorized as transnational crimes, namely money laundering, terrorism, theft of art and cultural objects, theft of intellectual property, illicit arms trafficking, aircraft hijacking, sea piracy, insurance fraud, computer crime, environmental crime, trafficking in persons, trade in human body parts, illicit drug trafficking, fraudulent bankruptcy, infiltration of legal business, corruption and bribery of public or party officials. Related to this, the strategy to overcome it through international cooperation schemes, including in the form of Mutual Legal Assistance in Criminal Matters (MLA), was also echoed.

MLA is a form of cooperation agreement that is very important and formal in the disclosure of transnational crimes. MLA formation was motivated by the emergence of factual conditions as a result of differences in the criminal law system in several countries which resulted in a slow and convoluted process of investigating crimes. This often happens because every country often wants to fully implement its legal system to deal with crimes.⁴

Article 18 paragraph (3) of the United Nations Convention Against Transnational Organized Crime provides a description that MLA can aim to take evidence or statements from someone; Judicial documents; Execution in search, seizure and suspension; Research on objects; Provision of information, evidence, and opinions of experts; Provide official or original copies of relevant documents and records, including government, bank, corporate or business records; Identifying or tracking the proceeds of crime, assets, or things that are intended for evidence; Facilitating the volunteering of persons in the Requesting State; Any other type of assistance as long as it does not conflict with the National law of the Requested State.

MLA is regulated in Law on Reciprocal Assistance in Criminal Matters in Indonesia (number 1 of 2006). The Government of the Republic of Indonesia has made this Law the basis when requesting and / or providing mutual legal assistance and as a guide for making MLA agreements with other countries. As referred to in these provisions, MLA can be implemented based on the agreement. However, if there is no agreement then assistance can be

³ This research is based on the flow of understanding from Ibrahim, J. (2005). *Teori dan Metodologi Penelitian Hukum Normatif*. Bayu Media, Surabaya. See also Marzuki, P. M. (2011). *Penelitian Hukum*. cetakan ke-11, Kencana, Jakarta.

⁴ Pardede, M. (2008). An Overview: Transnational Crime Issues in International Criminal Law Associated With MLA Regime. <http://ditjenpp.kemenkumham.go.id/hukum-pidana/258-an-overview-transnational-crime-%20issues-in-international-criminal-law-associated-with-mla-regim.html>, Retrieved Mei 22, 2020,

carried out based on good relations between countries in accordance with the principle of reciprocity.

Law on Reciprocal Assistance in Criminal Matters in Indonesia also contains several principles, namely the Principle of Specificity (Articles 3 and 4), the Principle of Reciprocity (Article 5 paragraph (2)), the Principle of Ne Bis In Idem (Article 6 letter b), the Principle of Double Criminality (Article 6 letter c), Non-racism Principles (Article 6 letter d), Sovereignty Principles (Article 6 letter e), Principles of not applying the death penalty, and Diplomatic Principles (Article 17). These principles are the basis for Indonesia in implementing mutual assistance cooperation in criminal cases including in the field of transnational taxation crime.

Similar research has been researched by several researchers, namely *first*, Matabean, R., & Juwono (2019) in their study entitled "Cooperation between the Tax Authority and the Anti-Corruption Authority in Efforts to Improve Tax Compliance" identifies that corruption and tax crimes can be interrelated. Therefore we need the right policies from the tax authorities and anti-corruption authorities in handling it.⁵ This paper tries to provide an overview of the design of cooperation that can be done in dealing with tax crimes and corruption. *Second*, Mohammad, R., & Rizal, H. Z. (2019) reviewed the issue of international disclosure and information exchange policies for tax purposes. The article entitled "Tax Avoidance Risk Mitigation in Cross-border Transaction Mode in Indonesia with the Automatic Exchange of Information for Tax Purpose Policy" examines Indonesia's steps to mitigate the risk of tax avoidance using cross-border transaction mode. This study examines the impact of this policy on the level of compliance of Indonesian residents with a difference-in-difference estimation study design using cross-border deposit data as a proxy for the compliance level of Indonesian residents who carry out cross-border transactions.⁶

Third, Amran Hanafi (2014) in his writing entitled "Efforts to Eradicate Corruption with the Anti-Money Laundering Regime: International Perspective" discusses the relationship between corruption and money laundering.⁷ This paper provides an overview of the steps that can be taken to provide wide opportunities for the success of the prosecution. *Fourth*, Dita Yunisa (2012) in her research "Application of the Follow the Money Approach in the Investigation Process of Money Laundering Crime in Indonesia by the Indonesian Police Criminal Investigation Unit" presented the results of her research regarding the need for a paradigm shift in law

⁵ Matabean, R., & Juwono, V. (2019). *Kerjasama Otoritas Pajak dan Otoritas Anti Korupsi dalam Upaya Meningkatkan Kepatuhan Pajak*. *Scientax*. 1(1). pp. 75-91. Retrieved from <https://ejurnal.pajak.go.id/st/article/view/12/6>

⁶ Mohammad, & R. Rizal, H.Z. (2019). *Evaluasi Tindak Lanjut Pengelakan Pajak Modus Cross-Border Transaction di Indonesia dengan Kebijakan Automatic Exchange of Information for Tax Purpose*. *Scientax*. 1(1). pp. 58-74. Retrieved from <https://ejurnal.pajak.go.id/st/article/view/9/5>

⁷ Amrani, H. (2014). *Upaya Pemberantasan Korupsi dengan Rezim Anti-Money Laundering: Perspektif Internasional*. *Jurnal Hukum Prioris*. 4 (2). pp. 157-174.

enforcement in the field of money laundering from 'follow the suspect' to "follow the money".⁸ However, this research still provides findings on the importance of cross-country cooperation. In line with this research, Ridwan Arifin et., Al (2016) in his research entitled "Efforts to Restore Corrupt Assets Abroad (Asset Recovery) in Law Enforcement to Eradicate Corruption in Indonesia" also revealed that corruption is transnational and involves many actors, causing asset recovery to be difficult.⁹ In principle, law enforcement in the field of tax crimes still always open up opportunities for choices.¹⁰

The study notes that asset returns can be done through formal channels with MLA and informally through diplomatic relations. The asset recovery stage consists of: (1) identification and tracing, (2) legal proceedings, and (3) confiscation of assets. Barriers to asset recovery include different legal systems, weak judges' decisions, government political will, and the application of bank secrecy principles in several countries. Problems that arise in the return of assets can be resolved with bilateral agreements, increasing the competence of law enforcement officials, and strengthening the rules and supporting infrastructure which in principle conclude that the return of assets requires cooperation between institutions and law enforcement officials both at home and abroad.

3.1. Portrait of transnational taxation crimes

In 2012, the Deputy Attorney General for Special Crimes (JAMPIDSUS), Head of the Indonesian Police Criminal Investigation Agency (BARESKRIM), The Secretary General of the Corruption Eradication Commission (KPK) made a joint agreement on 10 corruption-prone areas in Indonesia, one of which is the taxation sector.¹¹ National development in a country, including Indonesia, requires large funds from both domestic and foreign revenues. The largest source of funds used in national development comes from taxes. In the global era, many tax crimes have occurred, one of which is economic development and international trade. The world of taxation regulates that all transactions carried out by multinational companies have an obligation to pay taxes. So this makes them do many things to avoid these obligations, such as transfer pricing. Transfer pricing is a systematic engineering of price, tariff or reward policies with the intention of reducing the amount of artificial profit (a unit), producing false losses, avoiding taxes, or import duties in a country. In transfer pricing, there are two categories, namely intra-company and inter-company transfer pricing.

⁸ Yunisa, D. (2012). *Penerapan Pendekatan Follow the Money dalam Proses Investigasi Kejahatan Money Laundering di Indonesia oleh BARESKRIM POLRI*. Jurnal Kriminologi Indonesia. 8 (2). pp. 94-106.

⁹ Arifin, R., Utari, I.S., Subondo, H. (2016). Upaya Pengembalian Aset Korupsi yang Berada di Luar Negeri (Asset Recovery) Dalam Penegakan Hukum Pemberantasan Korupsi di Indonesia, "Indonesian Journal of Criminal Law Studies, 1 (1), pp. 105-137.

¹⁰ Rita de La Feria. (2020). *Tax Fraud and Selective Law Enforcements*, Journal of Law and Society, Vol. 43(2), pp. 240-270, doi: <https://doi.org/10.1111/jols.12221>

¹¹ Waluyo, B. (2014) *Optimalisasi Pemberantasan Korupsi di Indonesia*, Jurnal Yuridis, Vol. 1 No. 2, pp. 169-182 Doi: <http://dx.doi.org/10.35586/v1i2.149>

Intra company transfer pricing is transfer pricing between divisions within a company. Meanwhile, inter-company transfer pricing is transfer pricing between two companies that have a special relationship. The transactions themselves can be carried out in one country (domestic transfer pricing), or with a different country (international transfer pricing). This transfer pricing practice causes the potential for state revenue from the tax sector to shrink or even disappear. Though taxes are the main source of state revenue. For example in Indonesia, taxes contribute 74 - 80% of total income. According to the OECD (2014) there are 60% cross-border international trade carried out by multinational cooperation in Indonesia. However, 39% of these transactions evaded tax through transfer pricing. Meanwhile, according to Global Financial Integrity, in its report on illicit financial flows released in 2014, it was stated that Indonesia was ranked 7th out of the top 10 developing countries for illicit financial outflows. Transfer pricing practices by multinational companies contributed as much as 81% of illicit financial flows and 19% came from practices of corruption, money laundering, drug trafficking and other crimes. Economic crimes are crimes that are difficult to reveal.¹²

The Indonesian Minister of Finance, Sri Mulyani Indrawati, said how urgent it is for intensive international cooperation, in order to ensure that globalization that continues to move forward is not hijacked by the interests of high-risk transnational criminals and massive illicit financial flows. Globalization and the interdependent economy have brought the world in general to move forward, modernize, as well as reduce the number of poor people. However, a world without borders is also leading to high-risk transnational crime developing and difficult to tackle, various high-risk transnational crimes, with a fantastic nominal crime, such as human trafficking, child sexual exploitation, trade in protected wildlife, illegal logging, illegal fishing, illegal mining, tax evasion, mining sector transparency, corruption, money laundering, and terrorism. At the end of his explanation, Minister Sri Mulyani emphasized Indonesia's commitment to fighting money laundering, terrorism financing, and all other high-risk transnational crimes. This is evidenced by a series of progress that Indonesia has made in the aspects of policy, regulation, and implementation of the APUPPT principles in accordance with international standards set by the international organization the Financial Action Task Force on Money Laundering (FATF). Furthermore, he emphasized that Indonesia is ready to continue to contribute to a positive effect in building a global financial architecture that is sterile from criminal practices.¹³

¹² I. Karomatunnisa, H. Susiantingsih, and I. Putranti. (2016). Peran Organization for Economic and Development Dalam Menanggulangi Praktik Tax Crime di Indonesia. Studi Kasus: Transfer Pricing di Indonesia Tahun 2003-2012, *Journal of International Relations*, 2 (4), pp. 311-318.

¹³ Menteri Sri Mulyani: Mendesak, Kerja Sama atasi Kejahatan Transnasional Berisiko Tinggi dan Aliran Dana Gelap, https://www.ppatk.go.id/siaran_pers/read/1005/menteri-sri-mulyani-mendesak-kerja-sama-atasi-kejahatan-transnasional-berisiko-tinggi-dan-aliran-dana-gelap.html, accessed 14 November 2020

3.2. Portrait / conditions of the existing MLA Indonesia and Switzerland

The Indonesian Ministry of Law and Human Rights has published guidelines for Mutual Legal Assistance in Criminal Matter or commonly abbreviated as MLA. MLA or Reciprocal Legal Assistance is a mechanism for providing legal assistance by one law enforcement authority from one country to law enforcement authorities in another country. This cooperation usually includes tracking, collecting, freezing, confiscating, submitting evidence, and returning assets. MLA will be effective if it is based on a conference or international agreement that allows mutual legal assistance to occur.

In a universal context, The UN model treaty on mutual Assistance in Criminal Matters was adopted at the UN general session through resolution 45/177 on December 14, 1990, which is the only legal umbrella at the world level in the MLA issue. In the regional context, there is an ASEAN treaty on mutual legal Assistance on Criminal Matters, which is the result of a meeting in Kuala Lumpur on 29 November 2004 which was ratified by Indonesia through Law Number 15 of 2018 concerning Ratification of treaty on mutual legal assistance in Criminal Matters.

As an implementation of the MLA, in August 2017 the Ministry of Law and Human Rights of the Republic of Indonesia with cross-agency cooperation has agreed to the MLA agreement with Switzerland. As is generally known, Switzerland is often referred to as one of the countries where the assets of assets from other countries are stored, including Indonesia. This agreement is certainly beneficial for Indonesia, especially to narrow the space for criminals who want to hide the proceeds of their crimes abroad.

The MLA between Indonesia and Switzerland stated that it was possible for Indonesia to ask for Swiss assistance to make forced efforts against criminals such as searches, blocking of accounts, or knowing opening a bank account of the Suspected. For other forced services, Indonesia can also request data on a list of companies suspected of being linked to money laundering. However, it should also be noted that this cooperation does not yet cover extradition and corporal punishment for the perpetrators of criminal acts. However, this agreement is also a warning to corruptors, tax evaders and narcotics syndicates not to channel funds suspected of resulting from crimes to Switzerland.

With this agreement, there is a solution to the problem of jurisdiction in law enforcement. Indonesian law enforcement officials have an easier time accessing information about the flight of assets proceeds of crime to Switzerland. Switzerland is one of the countries that are members of Europe,

so that it can become an entry point for Indonesia for similar cooperation with other countries in Europe.¹⁴

3.3. Automatic exchange information

Automatic Exchange of Information (AEOI) is an automatic information exchange system facility that is used to identify and monitor potential domestic and foreign taxes. Countries that have followed the AEOI scheme or exchanged financial data between the two parties are those that are members of the Organization for Economic Co-operation and Development (OECD) such as Argentina, Brazil, China, India, Malaysia, Singapore and South Africa.

With Indonesia's involvement in joining the AEOI scheme, it is hoped that it will maximize the tax target. Not only that, this automatic exchange of financial information can also be used to track if a taxpayer is evading or evading taxes. In addition, there are three conditions that must be met in order to implement the AEOI system:

- a. There are official regulations that can facilitate DGT in obtaining all financial sector data, such as through the General Provisions and Tax Procedures (KUP).
- b. The ability to create a tax reporting system that can be adapted to the format and content of other countries.
- c. Having information technology with a strong database with the principles of confidentiality and information management.

In Indonesia, the application of the AEOI system is contained in the Minister of Finance Regulation (PMK) Number 39 / PMK.03 / 2017 which is the Revision of PMK Number 125 / PMK.10 / 2015 concerning Procedures for Information Exchange. Implementation of Automatic Exchange Information in Indonesia will be like in other countries where all countries that are members of AEOI will send and receive initial information every year without having to submit special requests.¹⁵

For example, DGT Indonesia can track financial information for Indonesian citizens (WNI) residing in Malaysia or Singapore, and vice versa. With the exchange of information between the two countries, there will be no taxpayers who can avoid paying taxes. AEOI for Indonesia has the following benefits:

- a. As a strategic step to improve the financial information management system in Indonesia.
- b. To reduce the potential for fraud in the state revenue sector or tax evasion.

¹⁴ Yassona H. L., (2019). *Diplomasi Mengusut Kejahatan Lintas Negara*. PT. Pustaka Alvabet, Tangerang Selatan. Page. xxx-xxxii.

¹⁵ Apa itu Automatic Exchange of Information? <https://news.ddtc.co.id/apa-itu-automatic-exchange-of-information-25209>, Accessed 2 November 2020.

- c. Entrepreneurs or corporate taxpayers can no longer hide their assets, financial assets or income abroad because they can still be tracked by the AEOI system. That way, no one will escape from their tax obligations.
- d. Realizing the tax targets desired by the government and improving the performance of international tax collection.

Currently, there are 103 countries that have participant jurisdiction and 87 countries are parties to reporting jurisdiction. Switzerland's position is included in the list of participating countries that have both participant and reporting jurisdiction.

3.4 Politics of Law in Implementing International Cooperation

International cooperation is cooperation between countries in reaching mutual agreements in accordance with their respective foreign policies. Each country can have a cooperative relationship with mutual respect for the legal system prevailing in each country. In ensuring the implementation of all existing regulations, Indonesia needs to collaborate with other countries, because current tax crimes can be committed without the existence of the perpetrator in Indonesia. In order for the investigation, investigation, prosecution and examination process to run, it is necessary to have international cooperation for countries to fulfill requests for mutual assistance in criminal matters in order to eradicate crimes that are committed in a planned and organized manner.

Indonesia is currently cooperating with mutual legal aid in criminal matters with ASEAN, Australia, Hong Kong, China, South Korea, India, Vietnam, the United Arab Emirates and Iran. This international cooperation is concrete in an international agreement which we know by various terms, namely treaties, conventions, agreements and others. In Law No.1 of 2006, the mutual legal assistance (MLA) in criminal matters is an inter-state agreement regarding requests for assistance in investigations, prosecutions and examinations in court in accordance with the provisions of laws and regulations. Requested State legislation. A reciprocal assistance agreement can be a legal basis for settling criminal cases that occur in each country.

The definition and meaning of international treaties in the legal system in Indonesia still contains confusion, because they do not differentiate between international treaties that are regulated by international law and national law, nor do they differentiate between international treaties that are legally binding and those that are not legally binding. The status of international treaties in national law has also not reached an agreement, regarding their status as binding international treaty norms or can be directly enforced into national law or it is necessary to carry out a transformation into the form of statutory regulations so that the form of transformation is what binds society or is enforced. The next problem also occurs at the ratification stage, where there is a difference between internal ratification and external ratification. The internal ratification itself goes through two procedures, namely by

involving the DPR with the products of laws, and with the products of presidential regulations.

Article 10 of Law on International Treaties¹⁶ states the various categories of treaties ratified by law, namely treaties in the fields of:

- a. political issues, peace, defense and state security;
- b. changes to the territory or determination of the territorial boundaries of the Republic of Indonesia;
- c. sovereignty or state sovereign rights;
- d. human rights and the environment;
- e. the establishment of new legal rules;
- f. foreign loans and / or grants.

Article 11 of Law on International Treaties (number 24 of 2000) stipulates that agreements are procedural without affecting statutory regulations, namely agreements in the fields of science and technology, economics, engineering, trade, culture, commercial shipping, avoidance of double taxation and protective cooperation. investment, as well as legalization of a technical nature ratified through a presidential regulation.

Sefriani in her book *The Role of International Law in Contemporary International Relations* states that ratification is not a ratification but an agreement, confirmation, the willingness of a State to submit (consent to be bound) and bound by an international treaty. A ratification law is different from an implementation law.¹⁷ Maria Farida in her dissenting opinion on the review of the law on the ratification of international treaties on the ASEAN Charter emphasized that the essence of the Law on the Ratification of International Covenants itself is a statutory law which is not of a normative substance, whose normality can be directly addressed to everyone.¹⁸

Based on the existing reciprocal agreement ratification law, the law also contains clauses that have been contained in the agreement text. According to the viewpoint of the dualism theory, these clauses do not have the binding power as mentioned by Judge Maria Farida above. So it is necessary to have an implementation law of the reciprocal agreement that has been agreed upon, so that the aims and objectives of the law are binding on the community.

4. Steps That Both Countries Can Take to Optimize the Role of Treaties

In many discussions, the effectiveness of law is determined in 3 aspects, namely, legal substance, legal structure dan legal culture.¹⁹ Legal substance relates to the content or substance of a regulation in tis various forms. The legal structure talks about how a law is enforced by its law enforcement

¹⁶ Indonesia, Law number 24 of 2000.

¹⁷ Sefriani. (2016). *Hukum Internasional: Suatu Pengantar*. Jakarta: Rajawali Press, pp.75

¹⁸ see the Constitutional Court for Republic of Indonesia decision Number 33/PUU-IX/2011.

¹⁹ This is popular, put forward by Lawrence M. Friedman. See more Bromley, D. (1977). *Journal of Economic Issues*, 11(4), 912-915. Retrieved December 3, 2020, from <http://www.jstor.org/stable/4224656>.

apparatus. Meanwhile, legal culture places more emphasis on public acceptance of legal substances associated with culture, customs and habits that are tied to the pattern of community life. These three aspects are important tools to measure how the law can be enforced effectively.

Crime in the economic sector is a type of crime whose handling is difficult because apart from the professional actors, the same is the process that has been carried out for a long time because it has links with many sectors including government, the private sector and the wider community. One form of crime that is difficult to reach by law is a crime in the field of taxation. All related sectors must have the courage to take preventive steps such as increasing morale and the ability of the apparatus to avoid all activities that can harm the country's economy and undermine the government's authority. The principle of *lex specialist derogate lex generalist* in the provisions of criminal law results in ineffectiveness in anticipating problems arising from crimes committed by the mandatory or those committed by the government.

Tax law provisions in relation to criminal law can be seen in Article 103 of the Criminal Code. The rules contained in the laws and other regulations in article 103 of the Criminal Code show that including provisions in the tax law are threatened both as crimes and violations contained in law number 16 of 2000 concerning general provisions and taxation procedures can be punished. in accordance with the Criminal Code. Law enforcement in the field of taxation has not functioned or implemented as expected due to:

- a. There is a taxpayer's mental attitude that is oriented towards solving tax problems by negotiating / compromising.
- b. There is a taxation doctrine that gives tax benefits that prioritize the benefits of the state.
- c. There is lack of public participation (taxpayers) in resolving tax crimes through the criminal justice system
- d. There is a policy in taking steps by the tax authorities.
- e. Tax crimes require a relatively natural act in the audit process
- f. The tax crime is a complaint offense
- g. Decisiveness of the Taxation Apparatus itself is still lacking
- h. It is difficult to prove a tax crime
- i. The taxation apparatus prioritizes administrative efforts and uses non-criminal means (non-penal).²⁰

Law enforcement in the field of taxation is often resolved by administrative settlement, it is time for the Government to pay attention to crimes in the taxation field to be brought to justice through the judiciary. The Indonesia-Swiss cooperation is an advancement in the field of tax law enforcement to take coercive measures against criminals such as searches, blocking accounts, or opening a Bank account of the Suspected. For other forced services, Indonesia can also request data on a list of companies suspected of being

²⁰ Adyan, A. R. (2007). Penegakan Hukum Pidana Terhadap Tindak Pidana di Bidang Perpajakan. *Pranata Hukum*, 2 (2), pp. 89-95.

linked to money laundering. However, this cooperation does not yet cover extradition and corporal punishment for the perpetrators of criminal acts.

5. Conclusion

The prospect of implementing a reciprocal agreement between Indonesia and Switzerland in the field of tax crimes could be an opening for mutual legal aid cooperation with other European countries, which is the first time Indonesia has cooperated in mutual legal assistance with countries in Europe. This agreement can help Indonesia to return state assets taken abroad by individuals who abuse state finances, especially state finances in the taxation sector. Where do we know that the source of funds used in national development is mostly obtained from taxes.

The steps that can be taken by the two countries to optimize the role of the agreement are to mutually ratify and implement it into their respective national laws, currently Indonesia has ratified it through Law Number 5 of 2020 concerning Ratification of the Agreement on Mutual Legal Aid in Criminal problems between the Republic of Indonesia and the Swiss Confederation, however, the ratification stage alone is not sufficient for a country that adheres to the dualism theory. Indonesia itself has not been consistent in implementing international treaties into national law. Indonesia must also have law enforcement officers who are reliable and have global insight, as well as a willingness to budget so that what has been promised can run as it should.

Suggestions for this study are the bilateral agreement between Indonesia and Switzerland regarding mutual legal assistance in criminal matters, especially in the field of taxation, is sufficient to avoid and / or return the proceeds of crime in the field of taxation, although it is not explicitly stated in the clause of the agreement specifically for tax crimes, but does not reduce the purpose of made the agreement. Indonesia and Switzerland need to make a law on the implementation of the bilateral agreement so that they have more certainty in their joint commitment to carry out the agreement.

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