

LAW OF THE REPUBLIC OF INDONESIA
NUMBER 1 YEAR 2006
CONCERNING
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

WITH THE BLESSINGS OF THE ONE ALMIGHTY GOD

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Considering : a. that the Republic of Indonesia is a Rule of Law State based on Pancasila and the 1945 Constitution of the Republic of Indonesia supporting and guaranteeing legal certainty, orderliness and protection based on justice and truth;
b. that crimes specially those having transnational or cross-state nature result in legal problems between one state and other states requiring treatment through good relationship based on the law of respective countries;
c. that the treatment of transnational crimes must be conducted through inter-state cooperation in the form of mutual legal assistance in criminal matters, which has not had any legal basis up to now;
d. that based on considerations as intended in points a, b, and c, it is necessary to establish a Law regarding Mutual Legal Assistance in Criminal Matters.

In view of : Article 5 paragraph (1), Article 11, and Article 20 of the 1945 Constitution of the Republic of Indonesia.

With the joint approval of
THE PEOPLE'S REPRESENTATIVE ASSEMBLY
OF THE REPUBLIC OF INDONESIA
and
THE PRESIDENT OF THE REPUBLIC OF INDONESIA

HAS RESOLVED:

To enact : LAW CONCERNING MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

CHAPTER I
GENERAL PROVISIONS

Article 1

In this Law the following definitions apply:

1. Statement shall be information provided orally and/or in writing.
2. Depositions shall be testimonies given by a witness, expert, accused, which are put into written forms or are electronically recorded such as records, cassettes, videos or other similar forms regarding anything known, seen, heard or personally experienced.
3. Documents shall be evidence in the form of data, recordings or information that can be seen, read and/or heard, with or without the assistance of an instrumentality on paper or any physical material other than paper, or electronically, including and not limited to:
 - a. writings, voice, or images;
 - b. maps, designs, photographs, or the like;
 - c. letters, signs, numbers, symbols, or perforations which have meaning or are understandable by those able to read or understand them.
4. Letters shall be all official Documents issued by competent officials in Indonesia or foreign states.
5. Forfeiture shall be coercive attempt to expropriate the right on properties or profits that have been obtained or may have been derived by a person from his/her crime committed, based on a judgment in Indonesia or a foreign state.
6. Freezing shall be temporary freezing of properties for the purpose of investigation, prosecution, or examination before the court with the purpose to prevent transfer or assignment and to prevent certain persons or all persons from dealing with the properties that have been obtained or may have been derived by a person from his/her crime.
7. Proceeds of crime shall be any property derived directly or indirectly from a crime, including the property into which any property derived or realized directly from the crime was latter successively converted, transformed or intermingled, including income, capital or other economic gains derived from such property at any time since the crime.
8. Officials shall be persons ordered or those who due to their positions have the authority to take actions in relation with mutual legal assistance.
9. Kapolri shall be the Chief of the National Police of the Republic of Indonesia.
10. Minister shall be the Minister of Law and Human Rights.
11. Attorney General shall be the head or the person holding the highest responsibility for prosecution leading, controlling the implementation of duties and authorities of the prosecution offices.

Article 2

The purpose of this Law shall be to provide legal basis for the Government of the Republic of Indonesia in requesting for and/or

providing mutual legal assistance in criminal matters and to provide guidelines in entering into an agreement on mutual legal assistance in criminal matters with foreign states.

Article 3

(1) Mutual legal assistance in criminal matters, hereinafter referred to as Assistance, shall be a request for Assistance in relation with the investigation, prosecution and examination before the court in accordance with domestic laws and regulations of the Requested State.

(2) The Assistance as referred to in paragraph (1) may be in the following forms:

- a. identifying and locating persons;
- b. obtaining statements or other forms thereof;
- c. providing documents or other forms thereof;
- d. making arrangements for persons to provide statement or to assist in the investigation;
- e. delivering letters;
- f. executing the inquiry of search warrant and seizure;
- g. the forfeiture of proceeds of crime;
- h. the recovery of pecuniary penalties in respect to the crime;
- i. the restraining of dealings in property, the freezing of property that may be recovered or confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect to the crime;
- j. locating property that may be recovered, or may be needed to satisfy pecuniary penalties imposed, in respect to the crime, and/or
- k. Other assistance in accordance with this Law.

Article 4

Provisions of this Law do not apply to:

- a. the extradition or surrender of any person;
- b. the arrest or detention, with a view to the extradition or surrender of any person;
- c. the transfer of persons in custody to serve sentences; or
- d. the transfer of proceedings in criminal matters.

Article 5

(1) Assistance may be provided based on a Treaty.

(2) In the absence of treaty as referred to in paragraph (1), the Assistance may be provided based on good relationship under the reciprocity principles.

Article 6

The request for Assistance shall be refused if:

- a. the request for Assistance relates to the investigation, prosecution or examination before the court or punishment of a person for the crime that is alleged:
 1. to have committed a crime of political nature, except a crime or attempted crime against the life or person of a Head of State/a Head of

Central Government, terrorism; or

2. to have committed a crime under military law;

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

c. the request for Assistance relates to the investigation, prosecution and examination before the court on a person for a crime which if it is committed in Indonesia, it cannot be prosecuted;

d. the request for Assistance is conveyed for prosecuting or bringing a person into justice based on a person's race, gender, religion, nationality, or political belief;

e. an approval for providing the Assistance upon its request will be harmful to the sovereignty, security, interests, and national law;

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

g. the foreign state may not assure to return, upon its request, any item obtained pursuant to the request.

Article 7

The request for Assistance may be refused if:

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

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

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

d. an approval for providing Assistance upon said request will be harmful for the investigation, prosecution and examination before the court in Indonesia, endanger the safety of person, or burden the assets of the state.

Article 8

The minister must consider an approval for providing Assistance based on specific procedures and requirements complied with before refusing the request for Assistance.

CHAPTER II

THE REQUEST FROM INDONESIAN GOVERNMENT

Part One

Conveyance of the Request for Assistance

Article 9

(1) the Minister may convey the request for Assistance to Foreign States directly or through diplomatic channel.

(2) The request for Assistance as referred to in paragraph (1) shall be conveyed by the Minister based on an inquiry from Kapolri or Attorney General.

(3) In case of corruption crime, the request for Assistance to the Minister may be submitted by the Chairman of the Commission for the Eradication of Corruption, in addition to the Kapolri and the Attorney General.

Part Two

Requirements for Conveyance of the Request

Article 10

The request for Assistance must contain the following:

- a. identity of the requesting authority;
- b. a description of subject matter and importance of the investigation, prosecution or examination before the court pursuant to said request, as well as the name and functions of a competent authority conducting investigation, prosecution and judicial process;
- c. a summary of relevant facts except for the request for Assistance related with judicial documents;
- d. provisions of relevant laws, contents of articles, and criminal sanctions;
- e. a description of the Assistance requested and details of certain procedures applied for, including confidentiality;
- f. purpose of the request for Assistance; and
- g. other requirements determined by the Requested State.

Part Three

Assistance for Locating or Identifying Persons

Article 11

The Minister may convey the request for Assistance to the foreign states to locate or identify persons believed to be in said foreign states, who:

- a. are suspected or reasonably suspected involved in the investigation, prosecution and examination before the court in Indonesia; or
- b. may provide depositions or other Assistance in an investigation, prosecution and examination before the court.

Part Four

Assistance for Obtaining Evidence

Article 12

(1) if it is believed that there are legal means of proof related with an investigation, prosecution and examination before the court in Indonesia, the Minister may ask for Assistance to the Foreign State to endeavor:

- a. the taking of a Deposition in the Foreign State; or
- b. the surrender of Documents or other legal means of proof located in the Foreign State.

(2) Deposition received from Foreign States based on the Request for Assistance as referred to in paragraph (1) sub-paragraph (a) may be accepted as legal means of proof in an investigation, prosecution, and examination before the court related to said request insofar as it has been acknowledged and/or signed by the Person making Depositions and by the competent official taking said Depositions.

(3) Documents or other legal means of proof originating from Foreign States based on the request for Assistance as referred to in paragraph (1) sub-paragraph b may be accepted as legal means of proof in an investigation, prosecution and examination before the court pursuant to said request for Assistance.

Article 13

In respect of the request for Assistance as referred to in Article 10, the Minister may ask that the Person providing Depositions or presenting Documents and other legal means of proof related with the request for Assistance be examined or cross-examined through direct meeting or with the aid of teleconference or direct broadcast through other communication or electronic facilities either in the phase of investigation, prosecution and examination before the court with:

- a. investigators, public prosecutors or judges; or
- b. defendants, suspects or their legal counsellor.

Part Five

Assistance for Arranging the Attendance of Persons in Indonesia

Article 14

(1) The Minister may convey a request for Assistance to the Foreign State to make an arrangement to present a Person in Indonesia to provide statement, documents or other legal means of proof or to provide other Assistance in the investigation, prosecution and examination before the court.

(2) In the event that a Person requested to present as referred to in paragraph (1) is willing to provide testimony and to travel to Indonesia, the Minister may make arrangements with said Foreign State to:

- a. bring a person concerned to Indonesia;
- b. return a person concerned to the Foreign State; or other relevant matters thereof.

Article 15

(1) In the event that the Person whose attendance is requested is a Detainee and is willing to provide testimony on his/her own will, and the Foreign State requests that a Person concerned shall be held in custody, the Minister shall coordinate with the requesting authority that a Person

concerned shall be held in custody.

(2) The Person as referred to in paragraph (1) shall be detained while he is in Indonesia and during travel to or from Indonesia.

(3) In the event that the Person whose attendance is requested is a Detainee, the Minister may make arrangements with a competent authority of the Foreign State for the purpose of:

- a. transporting a Person concerned to Indonesia;
- b. holding a Person concerned in custody during his/her stay in Indonesia;
- c. returning a Person concerned to the Foreign State; and
- d. other relevant matters thereof.

Article 16

Any person not willing to fulfill the request for Assistance as referred to in Article 14 and Article 15 may not be penalized under Indonesian Law.

Article 17

(1) Any person being in Indonesia upon request for Assistance based on Article 14 and Article 15 shall be entitled for legal immunities and privileges.

(2) Legal immunities and privileges as referred to in paragraph (1) shall be the protection of the right of a person concerned from being:

- a. detained, prosecuted, adjudicated and convicted based on Indonesian laws for any crime alleged to have been committed, or that was committed by a person concerned, before the person's departure from the Foreign State to fulfill such request;
- b. sued in any civil proceeding in Indonesia with respect to any act or omission, that occurred before the person's departure from the Foreign State to fulfill said request;
- c. required to provide a statement or other Assistance in relation with any criminal matter in Indonesia other than the criminal matters to which the request is related;
- d. required, in the process of investigation, prosecution, or examination before the court related with the request, to answer any question that the Person would not be required to answer under the law of the Foreign State; or
- e. required to deliver documents or any articles whatsoever that according to the law of his/her state are not authorized to be delivered.

(3) For the purposes provided for in paragraph (2), legal immunity assurance by virtue of law of the Foreign State shall be admissible in examination before the court, unless proven otherwise.

(4) The provision as referred to in paragraph (2) shall not apply in the following events:

- a. the Person has left Indonesia and then returns not pursuant to the same request for Assistance or other request; or
- b. the Person has had the opportunity to leave Indonesia but has

remained in Indonesia for purposes other than the following:

1. a purpose related with said request for Assistance; or
2. the purpose of providing testimony or voluntary assistance in the investigation, prosecution and examination before the court in Indonesia based on a Ministerial Decree.

Article 18

In the event that a Person is in Indonesia pursuant to the request for Assistance as referred to in Article 14 and Article 15 provides testimony in any criminal proceeding:

- a. related to said request for Assistance or criminal proceeding as a follow-up to the investigation to which said request for Assistance relates; or
- b. stipulated by the Minister in accordance with Article 17 paragraph (4) sub-paragraph (b) point (2) in relation with a person concerned, such testimony may not be submitted or used in any other criminal proceedings against a Person concerned for any action committed or alleged to have violated the Law of Indonesia, except in a trial of the Person for perjury or providing false information with respect to the testimony.

Part Six

Assistance for Requesting the Issuance of Orders in Foreign States in Acquiring Evidence

Article 19

The Minister may convey the request for Assistance to Foreign States to issue the following orders:

- a. freezing;
- b. search warrant;
- c. seizure; or
- d. other necessary orders in accordance with the provisions of laws and regulations in relation with criminal proceedings in Indonesia.

Article 20

The Minister may convey the request for Assistance to Foreign States to acquire legal means of proof existing in such Foreign States through search warrant and confiscation as referred to in Article 19.

Part Seven

Assistance for Service of Process

Article 21

The Minister may convey the request for Assistance to the Requested States to deliver letters pursuant to the settlement process of the investigation, prosecution and examination before the court to certain Persons or Officials in the Requested States.

Part Eight
Assistance for Executing Judgments

Article 22

The Attorney General may request the Minister to convey the request for Assistance to the Requested States to execute a judgment in such Requested States based on a judgment having obtained permanent legal force.

Article 23

A judgment as referred to in Article 22 may be in the form of a forfeiture of seized assets, penalty imposition, payment of compensation or restraining.

Part Nine
Limitation on the Use of Depositions, Documents and Evidence

Article 24

Any deposition, document or other legal means of proof obtained or provided upon request as referred to in Article 12 up to Article 14 may only be used by Indonesian competent officials for the purpose of an investigation, prosecution and examination before the court related with said request for Assistance.

Article 25

Limitation on the use of depositions, documents and legal means of proof as referred to in Article 24 may be exempted if:

- a. the Requested State receiving said request for Assistance approves the use of such depositions, documents or legal means of proof for other purposes, and
- b. the person as referred to in Article 14 and Article 15 approves the use of such depositions, document and legal means of proof for other purposes.

Part Ten
Transit

Article 26

If a person being detained in a foreign state is going to travel from the foreign state to Indonesia and is going to transit in another foreign state, the Minister shall notify of the same and convey a request for arrangements of his/her detaining during the transit in the aforementioned foreign state.

CHAPTER III
REQUEST TO THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

Part One
Conveyance of Request for Assistance

Article 27

(1) Any Foreign State may convey the request for Assistance to the Government of the Republic of Indonesia.

(2) The foreign state may convey the request for Assistance directly or through a diplomatic channel.

Article 28

(1) the Request for Assistance must include the following:

- a. the purpose of such request and a description of requested assistance;
- b. the name of Agency and Official conducting the investigation, prosecution or examination before the court related with said request;
- c. description of the crime, case settlement phase, statutory provisions, content of articles and sanctions imposed;
- d. description of the act or condition being alleged as criminal, except in case of the request for Assistance for conducting service of process;
- e. relevant judgment and information that such judgment has permanent legal force in the event of the request for Assistance to execute a judgment;
- f. details of specific procedures or requirements desired to be complied with, including information concerning whether or not legal means of proof required are to be made under oath or pledge;
- g. requirement, if any, concerning confidentiality and the reason therefore; and
- h. the desired time limit for carrying out said request.

(2) the Request for Assistance, to the extent that it is necessary and possible, must also contain the following:

- a. identity, citizenship, and domicile of the Person deemed able to provide statement or depositions related with the investigation, prosecution and examination before the court;
- b. a description concerning the requested statement or deposition;
- c. a description concerning required documents or other legal means of proof articles to be submitted, including a description concerning the Person deemed able to provide such evidence; and
- d. information concerning expenses and accommodations required from the Person requested to be present in said Foreign State.

(3) the Minister may ask for additional information if the information contained in the request for Assistance is not sufficient to approve such request for Assistance.

(4) A conveyance of the request for Assistance, information or other communications drawn up hereunder may be drawn up in the language of

the Requesting State and/or in English and the Indonesian translation thereof shall be made.

Article 29

(1) In the event that the request for Assistance has met requirements as referred to in Article 28, the Minister shall notify Kapolri or the Attorney General to be followed up.

(2) The Minister shall establish coordination with relevant agencies prior to take follow-up to the request.

Article 30

In the event that the request for Assistance from the Requesting State is refused, the Minister must inform said refusal to the competent official of the Requesting State together with the reasons for said refusal.

Part Two

Assistance for Locating and Identifying Persons

Article 31

(1) A Requesting State may convey the request for Assistance to the Minister to locate or identify a Person believed to be in Indonesia.

(2) The request for Assistance as referred to in paragraph (1) must include the following information, in addition to meet general requirements as intended in Article 28:

- a. Such request for Assistance is related with the investigation, prosecution and examination before the court in such Requesting State;
- b. The person related to said request for Assistance is suspected or reasonably suspected involved in a crime or is able to give Deposition or other Assistance in an investigation, prosecution and examination before the court; and
- c. The person is presumed to be in Indonesia.

(3) In the event that the request for Assistance as referred to in paragraph (1) has met requirements as intended in paragraph (2) and Article 28, the Minister shall order the Kapolri to carry it out and to inform and to submit the results to the Minister.

(4) The Minister shall inform the result of the implementation of the request for Assistance as referred to in paragraph (1) to the Requesting State.

Part Three

Assistance for Deriving Depositions, Documents and Other Evidences Voluntarily

Article 32

(1) A Requesting State may convey the request for Assistance to the

Minister for:

- a. Taking a Deposition from a person in Indonesia; or
- b. Delivering Documents and other legal means of proof located in Indonesia.

(2) In addition to requirements as referred to in Article 28, the request for Assistance must also include the following:

- a. Explanation that the request for Assistance is related with an investigation, prosecution and examination before the court in the Requesting State and the status of the person is as a suspect or a witness;
- b. The matters to be questioned in the form of a list of questions; and/or
- c. Description of deposition can be taken in Indonesia or documents or other legal means of proof being requested are in Indonesia.

(3) In the event the request for Assistance has met requirements as referred to in paragraph (2), the Minister may ask the Kapolri or the Attorney General in accordance with the phrases of case examination in the Requesting State to follow up the same.

(4) In the event that the Kapolri or the Attorney General has taken measures as referred to in paragraph (3), the Kapolri or the Attorney General shall deliver the results to the Minister.

(5) In the event that the provision of Assistance is approved pursuant to the provisions as referred to in paragraph (2), and the Requesting state requests that copies of documents be legalized, the Minister shall order a competent official in relevant jurisdiction to legalize the same and return them to the Minister.

Article 33

(1) A person involved in the process of investigation, prosecution and examination before the court in the Requesting State may not be forced to give a Deposition in Indonesia.

(2) Any person related to the request for Assistance as referred to in Article 32 paragraph (1) may not be forced to give a Deposition, to deliver documents or other legal means of proof in an investigation, prosecution and examination before the court in the Requesting State if Indonesian Law restricts the person in the same position to do so.

(3) the Person as referred to in Article 33 paragraphs (1) and (2) shall have the right for not being:

- a. detained, prosecuted, adjudicated and convicted based on domestic laws of the Requesting State for any crime alleged to have committed, or that was committed before his/her departure from Indonesia to fulfill said request;
- b. sued in any civil proceeding in the Requesting State with respect with any act or omission, that occurred before the person's departure from Indonesia to fulfill said request; or
- c. required to provide a statement or other Assistance in relation with any

criminal matter in Indonesia other than the criminal matter to which the request related; or

d. required, in the process of investigation, prosecution, or examination before the court related with said request for Assistance, to answer any question that the Person would not be required to answer under the law of his/her state.

(4) For the purposes as set forth in paragraph (2), an immunity certificate authenticated based on the law of the Requesting State shall be acknowledged as authenticated evidence, unless proved otherwise with regard to the matters mentioned in a Deposition.

(5) Any person related to the request for Assistance as set forth in Article 30, shall have the same privileges with respect to provision of a Deposition and delivery of Documents and other legal means of proof as if the investigation, prosecution and examination before the court on such person had not yet obtained a binding court decision in Indonesia.

Article 34

(1) Any person involved in the process of investigation, prosecution and examination before the court as intended in Article 33 paragraph (3) and Article 33 paragraph (4), must appear and give a Deposition alone or accompanied by his advocate and may be witnessed by officials from the Requesting State.

(2) Documents and/or other articles may be presented directly or through legal representatives and may be witnessed by representative officials of the Requesting State.

Part Four

Assistance for Arranging the Attendance of a Person in the Requesting State

Article 35

(1) the Requesting State may convey the request for Assistance to the Minister to arrange the attendance of a person being in Indonesia in the Requesting State.

(2) In addition to requirements as referred to in Article 28, a request for Assistance must also include:

- a. explanation that said request for Assistance is related with an investigation, prosecution and examination before the court, including the appearance before the court hearing in said Requesting State; and
- b. explanation that the person whose attendance requested to be arranged is deemed to be able to give or present statement related with an investigation, prosecution and examination before the court in said Requesting State; and
- c. adequate guaranty in relation with the matters as set forth in Article 36.

(3) If requirements as referred to in paragraph (2) have been met and

the person whose attendance is requested, without any coercion, has agreed to be present, the aforementioned request for Assistance may be granted.

(4) In the event the provision of Assistance is granted in accordance with the provisions in paragraph (3), the Minister may:

- a. in case that the person whose attendance is requested is a convict, order the convict to be released from the correctional institution and arrange for his travel to the Requesting State in the custody of the competent authority;
- b. in case that the person whose attendance is requested is a detainee, order the detainee to be released from detention, make arrangements for his travel to the Requesting State in the custody of the competent authority.

Article 36

Prior to giving approval for the provision of Assistance as referred to in Article 35, the Minister must receive assurances from the Requesting State with respect to the following matters:

- a. that the person whose attendance is requested will not:
 1. be detained, prosecuted or tried for any violation of the law of the Requesting State alleged to have been committed by the Person before he left Indonesia;
 2. be charged in a civil case that may be filed against him/her if he/she is in the Requesting State; or
 3. be requested to provide statement or other legal means of proof with respect to any investigation, prosecution and examination before the court in said Requesting State other than an investigation, prosecution and examination before the court related with said request; unless the person concerned has left the Foreign State, or has had opportunity to leave the Foreign State but is still in the Foreign State for the purposes other than giving statement or providing other legal means of proof with respect to an investigation, prosecution and examination before the court related to said request.
- b. that any statement given by the Person whose attendance requested may not be recognized or used in the prosecution against the Person concerned for violation of laws of the Requesting State, other than violations in the form of provision of false information or perjury.
- c. That the person whose attendance requested will be returned to Indonesia in accordance with the arrangement approved by the Minister as soon as possible after giving Statements;

Article 37

In the event the Person whose attendance is requested is a prisoner or detainee in Indonesia, the Minister shall request the Requesting State to arrange that a prisoner or detainee concerned remains in custody during his/her stay in said Requesting State and shall require it to repatriate him/her to Indonesia following the completion of the assistance.

Article 38

The person related with the request for Assistance as referred to in Article 35 will not be subject to sanctions or encumbered with any obligation, or charged pursuant to the law only by reason of that person's refusal or failure to consent to attend as requested.

Article 39

The convict or detainee who pursuant to the approval for the provision of Assistance as referred to in Article 35 paragraph (4) being released from the correctional institution where he/she is convicted or detained shall be considered to continue their imprisonment or detention term during their detention in the Requesting State, including during his/her travel.

Part Five

Transit

Article 40

(1) Foreign States may convey to the Minister for obtaining transit approval for witnesses who have the status as detainees or prisoners.

(2) Such request must include:

- a. Description of the route, time, mode of transportation used and duration of transit;
- b. The identity and trip documentations of the detainees or prisoners and the guards; and
- c. Facilities requested.

(3) The Minister shall order the Kapolri or the relevant Officials to follow up the request or provide facilities required during transit.

(4) Based on the aforementioned order, the Kapolri or relevant Officials shall followup the same by:

- a. Placing them in a transit room in the custody of competent official of the foreign state for a maximum period of 12 (twelve) hours; and
- b. In the event that the aircraft or ship which the person is transported lands or moors at a place in Indonesia for more than 12 (twelve) hours, the person concerned must be placed in the nearest Penitentiary.

(5) In the event that the transit period has exceed the request, the Minister may order that the person be returned to the Foreign State from which the Person first departed.

Part Six

Assistance for Conducting Search and Seizure of Goods, Articles or Assets

Article 41

(1) Requesting States may submit the request for Assistance to the Minister for conducting search warrant and seizure of goods, articles or assets existing in Indonesia based on warrant and/or court stipulation for the purpose of investigation or examination before the court.

(2) In addition to the obligation to meet requirements as referred to in Article 28, the request as intended in paragraph (1) must also enclose the search and seizure warrants issued by competent officials in the Requesting States.

(3) If the request has met requirements stipulated herein, the Minister may forward the same to the Kapolri for the purpose of investigation or the Attorney General for the purpose of prosecution before the court of law in the Requesting states.

(4) For implementing the request for Assistance as referred to in paragraph (3), the Kapolri or Attorney General shall apply for search and seizure warrants to the Head of the local District Court.

Article 42

The Head of the Local District Court may issue search and seizure warrants with respect to the object if it is believed that in or at a certain place there are goods, articles or assets that are:

- a. allegedly obtained from or the proceeds of crime under the law of the Requesting State that have been or allegedly have been committed;
- b. used to commit or prepare such crime;
- c. particularly designed or allocated to commit such crime;
- d. related to such crime;
- e. that is believed to be evidence in such crime; or
- f. that was used to hamper the investigation, prosecution and examination before the court of such crime;

Article 43

Search and seizure warrants as referred to in Article 42 shall contain the following elements:

- a. alleged crime that is related to the issuance of the warrant;
- b. a searchable place based on the relevant warrant;
- c. description on goods, objects or assets approved to be seized;
- d. the time limit of a warrant;
- e. other terms and conditions related to goods, objects or assets.

Article 44

(1) A warrant as referred to in Article 42 shall grant to the police officers or prosecutors to conduct a search and seizure.

(2) A search and seizure as referred to in paragraph (1) shall be conducted based on applicable criminal procedure code.

Article 45

(1) the Police officers or prosecutors conducting seizure of any good, object or asset based on a warrant as referred to in Article 43 must deliver said good, object or asset to the State Storehouse for Seized Goods for safekeeping.

(2) In the event that goods, objects or assets cannot be kept in the State Storehouse for Seized Goods, the Head of the State Storehouse for Seized Goods may request for assistance to the National Police of the Republic of Indonesia for safety of said goods, objects or assets.

(3) The seizure as referred to in paragraph (1) may be conducted for not longer than the issuance of decision by a court of the Foreign State having permanent legal force or notification from the Requesting State that the seizure is no longer required.

(4) If there is a party harmed by the seizure as referred to in paragraph (1), the party concerned or the legal counsel thereof may file an objection or defense to the District Court issuing the seizure warrant in accordance with the applicable procedural code.

Article 46

The Minister shall notify the Requesting State on the progress in the seizure as referred to in Article 45 conducted by the Kapolri or Attorney General.

Article 47

In the event that the Requesting State asks that goods, objects, assets or evidence of seizure of goods, objects or assets be sent to the Requesting State for the purpose of criminal proceeding and the Minister considers that such request can be granted and there is a guarantee that the Requesting State will return the aforementioned goods, objects or assets, the Minister shall send goods, objects or assets to the Requesting State.

Part Seven

Assistance for the Service of Letters

Article 48

(1) The Requesting State may make convey the request for Assistance to the Minister to deliver a Letter to a person in Indonesia.

(2) The Minister may approve the Assistance based on a request for Assistance as referred to in paragraph (1), if:

- a. The request for Assistance relates to a process of investigation, prosecution and examination criminal proceeding in the Requesting State;
 - b. The prospective recipient of the Letter is believed to be in Indonesia;
- and
- c. In the event that the request for Assistance relates to the service of a summons to provide statement in said Requesting State, then:
 1. Said request for Assistance shall be made by no later than 45 (forty five) days prior to the date the person is required to appear; and
 2. The Requesting State has given adequate assurances with respect to matters as referred to in Article 36.

(3) In the event that the Assistance is approved in accordance with the provision as referred to in paragraph (2), the Minister shall order the Kapolri to arrange the delivery of the Letter.

(4) The Kapolri must make an effort to deliver the letter:

- a. In accordance with the procedure proposed in the request, or
- b. In accordance with Indonesian Law, if
 1. The procedure as intended in letter (a) breaches the law;
 2. It is inappropriate for implementation in Indonesia; or
 3. the Requesting State does not propose any procedure.

(5) In the event that the Letter has been delivered, Kapolri must send a statement regarding the delivery of a Letter to the Minister to be forwarded to the Requesting State.

(6) In the event that the aforementioned Letter as referred to in paragraph (5) is not delivered, Kapolri must return it to the Minister along with the reason of the failure.

Article 49

Prior to giving approval for the Assistance requested in accordance with Article 48 paragraph (2) letter c, the Minister shall have received assurances from the Requesting State that the Person related to the request for Assistance shall not be subject to any sanction, subjected to any obligation, or charged based on law only because of that person's refusal or failure to fulfill the summons.

Article 50

In the event that the request for Assistance as referred to in Article 48 paragraph (2) letter c is approved but the Person related with the request for Assistance refuses or fails to fulfill the summons, such person shall not be subject to any sanction or encumbered with any obligation or charged based on law.

Part Eight

Assistance for Following Up Court Decision of the Requesting State

Article 51

(1) The Requesting State may convey the request for Assistance to the Minister to follow up decisions in the following forms:

- a. Confiscation and forfeiture of assets
- b. Imposition of penalty; or
- c. Payment of compensation.

(2) In addition to requirements as referred to in Article 28, the request for Assistance must also include the following:

- a. Description of said assets;
- b. Location of assets;
- c. Certificate of ownership.

(3) If the request for Assistance has met requirements as referred to in paragraph (2), the Minister may request the Attorney General to follow up the order.

Article 52

(1) Based on the request of the Minister as referred to in Article 51 paragraph (3), the Attorney General or officials appointed by the Attorney General shall submit application for seizure warrant of assets as referred to in Article 51 to the Local District Court.

(2) After receiving the application as referred to in paragraph (1), the local District Court shall:

- a. Scrutinize and examine the application dossier along with the attachments thereto;
- b. Issue a seizure warrant; and
- c. Order the Prosecutors' office to conduct seizure

(3) After obtaining a seizure warrant from the District Court, the Prosecutors' Office may conduct the seizure in accordance with the applicable Criminal Procedure Code and announce the seizure within no less than 2 (two) national daily newspapers.

(4) Owners having objection to the seizure conducted as referred to in paragraph (3) may contest the same to the District Court within 3 (three) months following the notification on the seizure legally conveyed to relevant parties.

(5) In the event that there are other parties harmed due to the seizure as referred to in paragraph (3), such parties may file objection or challenge to the District Court issuing the seizure warrant by no later than 6 (six) months following the announcement.

(6) If there are no challenge in the period of time as referred to in paragraphs (4) and (5), the District Court may issue an order to seize based on the request of the Prosecutors' Office.

Article 53

The Minister shall notify the Requesting State regarding the progress of the seizure as referred to in Article 52 having been conducted by the Attorney General and shall negotiate and arrange the delivery of the result of the seizure.

Article 54

(1) A requesting state may submit changes to a request for Assistance in the form of addition, deletion or cancellation to the Minister before the announcement of confiscation and intended in Article 52 paragraph (3).

(2) In the event of changes to a request for Assistance in the form of addition, the Minister shall ask the Attorney General to submit application to the local District Court to issue a search warrant in the form of new stipulation.

(3) In the event of changes to a request for Assistance in the form of deletion, the Minister shall ask the Attorney General to submit a request to the local District Court to issue a seizure warrant in the form of new stipulation and to annul the previous stipulation.

(4) In the event of a cancellation of a request for Assistance, the Minister shall ask the Attorney General to submit a request to the local District Court to revoke the seizure warrant issued by issuing a new order and ask to the Requesting State to give compensation and/or rehabilitation pursuant to the treaty.

(5) If the change of request is received during an examination process due to a contest or objection, the Minister shall ask the Attorney General to submit a request to the District Court examining the case to consider the change of request in its decision.

Part Nine Financing

Article 55

All expenses incurred in the implementation of requests for Assistance shall be charged to the Requesting State requesting for the Assistance, unless stipulated otherwise by the Requesting State and the Requested State.

CHAPTER IV MISCELLANEOUS PROVISIONS

Article 56

Regulations herein shall not prejudice the implementation of mutual cooperation in criminal matters having been conducted until now through the International Criminal Police Organization-INTERPOL.

Article 57

The Minister may enter into an agreement with a foreign state to obtain shares on the seized properties:

- a. in the foreign state, as the result of an auction taken based on a seizure order requested by the Minister; or
- b. in Indonesia, as the result of an auction taken in Indonesia based on a seizure decision requested by the foreign state.

Article 58

(1) the Minister may require the Requesting State to keep secret a

request for Assistance, the content of the request and any of its supporting documents, as well as the provision of assistance based on the aforementioned request.

(2) In the event that the request for Assistance cannot be approved by the Requesting State without violating the confidentiality, the Minister may determine whether such request will stand although it violates the requested confidentiality.

(3) The Minister shall keep secret information, deposition, document, property or other evidence provided, or delivered by the Foreign State, unless the aforementioned information, depositions, documents, property or other evidence are required for a criminal case related to the above-mentioned request.

CHAPTER V TRANSITIONAL PROVISION

Article 59

By the time this Law comes into effect:

- a. all mutual legal assistance treaties having been signed before the effective date hereof shall remain applicable.
- b. All requests for Assistance submitted either based on a treaty or otherwise shall remain to be processed insofar as they are not contradictory hereto.

CHAPTER VI CLOSING PROVISIONS

Article 60

This Law shall come into effect as from the date of its promulgation. For public cognizance, hereby ordering the promulgation of this Law by publishing it in the State Gazette of the Republic of Indonesia.

Promulgated in Jakarta
On March 3, 2006

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

SUSILO BAMBANG YUDHOYONO

Enacted in Jakarta
On March 3, 2006
THE MINISTER OF LAW AND HUMAN RIGHTS,
THE REPUBLIC OF INDONESIA
AD INTERIM,
(YUSRIL IHZA MAHENDRA)

DRAFT OF ELUCIDATION OF LAW
OF THE REPUBLIC OF INDONESIA
NUMBER 1 YEAR 2006
CONCERNING
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

I. GENERAL

The State of the Republic of Indonesia shall be a Rule of Law State based on Pancasila and the 1945 Constitution of the Republic of Indonesia supporting and guaranteeing legal certainty, orderliness and protection based on justice and truth. National Law Development is directed to establish national legal system carried out by creating new law required in the support of government general duties and national development. Said new law product is expected capable to secure and promote the implementataion of free and active foreign policy in order to establish new world order based on independence, abiding peace, and social justice. In the development of science and technology in particular the development of transportation, communication and information makes no border between one country to another so that people or goods transport from one country to other country shall be carried out easily and rapidly. This also makes the development of criminal activities and their modus operandi is more sophisticated so that its prevention needs cooperation between one country and another.

Mutual legal assistance in criminal matters between one country and another occurred both in the Requesting Country and the Requested Country is deemed necessary to ease the process of investigation, prosecution and examination before the court.

To provide solid legal basis on cooperation among countries in term of mutual legal assistance in criminal matters, a legal framework is deemed necessary as reference for Government of the Republic of Indonesia to enter into an agreement and to implement an inquiry of cooperation from a foreign country. Said legal framework shall be prepared in law that stipulates some principles or basis, procedure and requirement of an inquiry of assistance, and its criminal procedure.

Principles or basis of mutual legal assistance in criminal matters in this Law shall be based on criminal procedure provisions, current bilateral agreement, and international conventions and legal norms. A mutual legal assistance in criminal matters may be carried out based on an agreement and if there is no agreement, it may be carried out based on good relationship.

This Law shall not provide an authority to carry out extraditions or surrendering people, detaining or arresting people, transferring prisoners or transferring a case.

This Law shall provide details on an inquiry on mutual legal assistance in criminal matters from Government of the Republic of Indonesia to the Requested Country and from the Requested Country to the Republic of Indonesia including proposing an inquiry, requirements of inquiry, assistance in locating or identifying people, gathering legal means of proof and presenting people.

This Law shall also provide legal basis for the Minister who is responsible in law and human rights as a Central Authority acting as a coordinator in proposing an inquiry of mutual legal assistance in criminal matters to a foreign country and the application of mutual legal assistance in criminal matters from a foreign country.

II. ARTICLE TO ARTICLE

Article 1

Sufficiently clear.

Article 2

Sufficiently clear.

Article 3

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Sub-paragraph a

Sufficiently clear.

Sub-paragraph b

Sufficiently clear.

Sub-paragraph c

Sufficiently clear.

Sub-paragraph d

Sufficiently clear.

Sub-paragraph e

Sufficiently clear.

Sub-paragraph f

Sufficiently clear.

Sub-paragraph g

Sufficiently clear.

Sub-paragraph h

Sufficiently clear.

Sub-paragraph i

Sufficiently clear.

Sub-paragraph j

Sufficiently clear.

Sub-paragraph k

"Other assistance" in this provision means including information exchange related with evidentiary.

Article 4

Sufficiently clear.

Article 5

Paragraph (1)

Sufficiently clear.

Paragraph (2)

"Good relationship" in this provision means friendly relationship based on national interest and principles of equality, mutual benefit and considering both domestic laws and regulation and international law.

Article 6

Sub-paragraph a

Point 1

"An offence of political nature" in this provision means a criminal act against national security as stipulated in the penal code.

Point 2

Sufficiently clear.

Sub-paragraph b

Sufficiently clear.

Sub-paragraph c

"Cannot be prosecuted" in this provision is connected to an act of person that is a basis of inquiry by the Requesting Country, however, said act shall not be classified or exempted from a criminal act.

Sub-paragraph d

Sufficiently clear.

Sub-paragraph e

Sufficiently clear.

Sub-paragraph f

Sufficiently clear.

Sub-paragraph g

Sufficiently clear.

Article 7

Sufficiently clear.

Article 8

Sufficiently clear.

Article 9

Paragraph (1)

If a diplomatic channel is unavailable, coordination with relevant institutions is deemed necessary.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Article 10
Sufficiently clear.

Article 11
Sufficiently clear.

Article 12
Sufficiently clear.

Article 13
Sufficiently clear.

Article 14
Sufficiently clear.

Article 15
Sufficiently clear.

Article 16
Sufficiently clear.

Article 17
Sufficiently clear.

Article 18
Sufficiently clear.

Article 19
Sub-paragraph a
"Pemblokiran" in this provision shall also be known as freezing or restrain.

Sub-paragraph b
"Pengeledahan" in this provision shall also be known as search.

Sub-paragraph c
"Penyitaan" in this provision shall be known as a seizure.

Sub-paragraph d
Sufficiently clear.

Article 20
Sufficiently clear.

Article 21
Sufficiently clear.

Article 22
Sufficiently clear.

Article 23
Sufficiently clear.

Article 24
Sufficiently clear.

Article 25
Sufficiently clear.

Article 26
Sufficiently clear.

Article 27
Sufficiently clear.

Article 28
Paragraph (1)
Sufficiently clear.

Paragraph (2)
Sufficiently clear.

Paragraph (3)
Kapolri, AGo, of the Chairman of the Court may request for additional information from a foreign country thru a Minister.

Paragraph (4)

Sufficiently clear.

Article 29

Sufficiently clear.

Article 30

Sufficiently clear.

Article 31

Sufficiently clear.

Article 32

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

In carrying out his/her duties, Kapolri or AGO may order an appointed official within his/her institution.

Paragraph (4)

Sufficiently clear.

Paragraph (5)

Sufficiently clear.

Article 33

Sufficiently clear.

Article 34

Sufficiently clear.

Article 35

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

In this provision, the custody shall be conducted by the National Police of the Republic of Indonesia.

Article 36

Sufficiently clear.

Article 37

Sufficiently clear.

Article 38

Sufficiently clear.

Article 39

Sufficiently clear.

Article 40

Sufficiently clear.

Article 41

Paragraph (1)

"Penyitaan" shall include freezing or restrain.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

Sufficiently clear.

Article 42

Sufficiently clear.

Article 43

Sufficiently clear.

Article 44

Sufficiently clear.

Article 45

Paragraph (1)

"seizure" shall also include a seizure of ownership evidence or documents relevant to said goods, objects or assets.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

Sufficiently clear.

Article 46

Sufficiently clear.

Article 47

Sufficiently clear.

Article 48

Sufficiently clear.

Article 49

Sufficiently clear.

Article 50

Sufficiently clear.

Article 51

Paragraph (1)

"Decisions" shall be judgments which are final.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Article 52

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

Sufficiently clear.

Paragraph (5)

In the event that a district court refuses a claim or the objection proposed by a victim, a person concerned may take legal actions based on prevailing criminal procedure code.

Paragraph (6)

Sufficiently clear.

Article 53

Sufficiently clear.

Article 54

Paragraph (1)

Sufficiently clear.

Paragraph (2)

"New stipulation" in this provision shall be additional stipulation upon a previous stipulation.

Paragraph (3)

"New stipulation" in this provision shall revoke a previous stipulation and enact a new stipulation.

Paragraph (4)

"New stipulation" in this provision shall revoke a previous stipulation.

Paragraph (5)

Sufficiently clear.

Article 55

Sufficiently clear.

Article 56

Sufficiently clear.

Article 57

Shares on seized properties shall be deposited to the State Cash as Non-Tax Revenue Post.

Article 58

Sufficiently clear.

Article 59

Sufficiently clear.

Article 60

Sufficiently clear.