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### THE LEGAL ENFORCEMENT OF ORGANIZED TRANSNATIONAL CRIME (OUTLAW MOTORCYCLE GANGS STUDY IN INDONESIA)

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#### **ABSTRACT:**

Outlaw Motorcycle Gangs (called OMG) is an organization whose members use motorcycle club as a channel for criminal company. This type of crimes includes transnational crimes that across national borders because they are widely spread in various countries. Indonesia is still deemed weak in enforcing the law related to this matter, although Indonesia has own its International Police agency to handle various kinds of transnational cases namely the National Central Bureau of International Police (NCB-INTERPOL). This study aims to find out the organized transnational crimes in Indonesia, and to find out the role of Indonesian NCB-INTERPOL in preventing and carrying out the legal enforcement for the organized transnational crime. The method of the study was normative-juridical research or literature, the type of the study was legal research. The activity carried out by the Outlaw Motorcycle Gangs was a criminal activity that carried out across borders "transnational crime", in which within the OMG structure was interconnected among branches/ chapters in the country where the OMG was opening affiliation. The role of Indonesian NCB-INTERPOL was contained in the Chief of Police Decision No. Pol.: Skep/203/V/1992.

**Keywords:** Indonesia, Outlaw Motorcycle Gangs, Transnational crime, NCB-INTERPOL.

## INTRODUCTION

Nowadays in the era of globalization, the rapid growth of science and technology makes it easier for everyone to relate to each other (Block & Cameron, 2002). The growth in the use of sophisticated equipment that is created makes it seem as if the borders among countries are lost, because various kinds of information can be received and sent to other countries without going through complicated procedures (Berliana et al., 2019). Such development of science and technology indirectly affect the development of the international society and international law.

As a result of the technological development, then it must be followed by scholars of international law if the branch of law does not want to be left behind because with the development of technology society will be able to bring their life to become more complex, as well as the development of crime (Dammer & Albanese, 2013). For this reason, it is necessary to have people who understand various legal regulations, both national and international law.

This is in line with the economic growth of the world society which is leading to the realization of free trade and has a new impact on the growth and development of crime, both at national and transnational levels that across national borders or known as transnational crime (Herdiana et al., 2019). Transnational crime is a crime that not heed the territorial borders of a country (borderless) (Agustina, 2006). The modus operandi or group crime, its form or type, and its *locus tempus delicti* involve several different countries and legal systems. One example of transnational crime is OMG (Outlaw Motorcycle Gang).

OMG is an organization whose members use their motorbike as facility to commit criminal acts. OMG is highly structured whose members are involved in criminal activities such as violent crime, illegal trade in weapons, illegal drug trafficking. There are more than 300 active OMGs in the United States and spread to countries all over the world, ranging from the size of a single branch/ chapter with five or six members to hundreds of branches with thousands of members throughout the world. In Europe, these motorcycle gangs disturb public peace (von Lampe, 2019). In Denmark, the club outlaw motorcycle is restricted (Klement, 2019). This OMG has a greatly domino impact on the change of mindset which is affected by the existence of this OMG. In Indonesia has entered without any very serious supervision from the legal enforcement officers in Indonesia, there are 3 out of the top 10 OMGs in the world and those given criminal acts from many elements of the police of other countries, INTERPOL, EUROPOL, ASEANAPOL, and others. Officially opening the Chapter in Indonesia and even making an international event.

The example of the case in West Java that revealed by the Tempo newspaper which stated that precisely, on Monday December 20, 2010, there had been occurred a clash between the two OMG parties taking place in 154

street, Bandung, that were carried out at dawn. The offenders committed the destruction of the Aceh noodle shop and injured the six members of the Southland mg by using blunt objects and using sharp weapons which committed by the Brotherhood MC group. Foreign motorcycle gangs from the United States and Australia are detected wanting to develop their groups in Indonesia (Lipner & Chatterji, 2005).

Each country must appoint an institution in their country respectively as the National Central Bureau (NCB). In addition to being mandated by the ICPO-INTERPOL Constitution, the existence of the NCB (National Central Bureau) is also intended to minimize territorial barriers which become the limitation of jurisdictional power and other issues, such as the procedural problems from diplomatic mechanism in preventing and eradicating criminal acts that occur in the world, transnational crime. Even though there is already NCB-INTERPOL in Indonesia, but there is a possibility that transnational crimes can still escape and develop into the new chapters. This study aims to find out the organized transnational crime in Indonesia, and to find out the role of Indonesian NCB-INTERPOL in preventing and carrying out the legal enforcement for the organized transnational crime.

## **RESEARCH METHODS**

The method which used in this paper was the Normative Jurisdiction method or literature. Using the data collection instrument in the form of document studies, namely data collection obtained from the laws and regulations, as well as through the search of books, articles and the internet relating to the Enforcement of Indonesian NCB-INTERPOL against OMG. The legal research was conducted by researching the organized transnational crime against OMG in Indonesia (Barkan et al., 2015).

The problem approach used in this study was the statute approach and conceptual approach (Raymer, 2018). The statute approach was carried out by analyzing the laws and regulations relating to the organized transnational crime against OMG in Indonesia. Furthermore, conceptual approach was carried out by analyzing the concepts that put forward by the experts and in laws and regulations relating to the Indonesian National Police.

The primary legal material in this study included the basic norm and rule, basic regulation, and the laws and regulations and international convention relating to the organized transnational crimes against OMG in Indonesia.

## **RESULT AND DISCUSSIONS**

### ***History of the Organized Transnational Crime***

At first the organized crime was a domestic affair of a country even though it was clearly illustrated the existence of transnational nature. This crime was domestic because it was committed by a group that only sought strength and profit in the city they were in. This kind of understanding only lasted until the end of the Cold War.

The organized transnational crime was a development from the identification of the new characteristics on the contemporary form of organized crime in the 1970s by a number of international organizations. While, the introduction of the term was firstly stated in the United Nations' Congress on the prevention of crime and the treatment of offenders in 1975 (Beare, 2003).

After the Cold War ended, the globalization began to grow significantly. The globalization required the international society to reduce the borders of its country in the sense of reducing the barrier to socializing (Globalization, 2004). Trade, transportation, information and technology experienced rapid development. On the one hand, globalization has many positive impacts, such as world economic growth. But it seems that globalization also provided an opportunity for criminal experts to carry out various illegal activities that harmed the society, both in the national and/ or international scope.

### ***The Definition of the Organized Transnational Crime***

Transnational crime, generally defined by Passas, (2003) as:

"Mistakes which must be avoided, which cause serious harm to guarantee the country's intervention and similar to other types of criminal acts in the involving countries or by international law, what makes the organized transnational crime is that the offender or victim finds himself in - or operates through - different jurisdiction".

The definition above was not entirely legal or sociological. Thus, this definition avoided the weakness of the legal definition solely even though at the same time it seems necessary to include the moral or political elements. The phrase "the danger is avoided and unnecessary as well as serious enough to guarantee the country's intervention" could be complicated when used in empirical studies. In Passas's most recent work on collision, the term cross-border crime was used instead of transnational crime with another definition of Passas, (2003):

"Cross-border crime is a behavior that endangers the interests protected by law in more than one national jurisdiction and is criminalized in at least one of the countries concerned."

With this definition, the values that might largely infiltrate the definition might be avoided. However, in some cases such a definition, if taken literally, would leave some examples of behavior that were usually seen as cross-border or transnational crime.

### ***Scope of the Organized Transnational Crime***

The development of transnational crime and international crime was the characteristic of the development of criminal law nowadays (Manurung et al., 2016). The development of these crimes has had a broad and fundamental impact, besides towards the human life, also to the principles of law, norm and institution relating to the implementation of criminal law in overcoming these

crimes. Judging from the development and the origins of international crime could be divided into 3 (three) groups, namely:

- a) International crime which came from the habits developed in international law practices;
- b) International crime which came from international convention;
- c) International crime which was born from the history of the convention development on human rights.

There were various types of organized crime that occurred in various countries:

#### 1. Organized Crime of Hierarchical Model

The hierarchical model described a "family" structure with several ranks similar to the military rank from the boss to the lowest soldier. The bosses controlled family activities. Valachi also testified that the "commission" of the bosses consisted of about 12 families from various major cities throughout the country.

#### 2. Organized Crime of Local/ Ethnic Model

Nowadays there were many studies on the organized crime groups in various local areas in all parts of the country, all of which showed that (1) cultural and ethnic ties, rather than hierarchy, connected offenders to one another, and (2) the group studied was local and did not appear to have anything to do with international crime syndicate.

#### 3. Organized Crime of Company Model

The organized crime of company model focused on how economic consideration, not hierarchical or ethnic consideration, which became the basis for the formation and the success of organized crime groups. Various empirical studies of organized crime operation justified this view.

### **Development of the Organized Transnational Crime Regulation**

United Nation Convention against Transnational Organized Crime in Palermo November 2000 (Palermo Convention) Betti, (2003) stipulated that there were 5 (five) types of crimes including transnational crime, namely: narcotics, genocide, counterfeit money, crime in the sea and Cyber Crime. From the spirit of fighting transnational crime, on December 20, 1997 ASEAN member countries agreed to the "ASEAN Declaration on Transnational Crimes", through a meeting of ASEAN Foreign Ministers in Manila. The implementation of the Declaration was the formation of the AMMTC (ASEAN Ministerial Meeting on Transnational Crime) forum which was technically operational carried out by the SOMTC (Senior Officer Meeting on Transnational Crime).

At the 2nd AMMTC meeting on June 23, 1999, 6 (six) crime issues have been agreed including transnational crime issues, namely Terrorism, Illicit Drug Trafficking, Trafficking in Persons, Money Laundering, Arm Smuggling and Sea Piracy. Then with the agreement of 2 (two) other crime issues namely Cyber Crime and International Economic Crime into transnational crime issue

at the 3rd AMMTC meeting in Singapore on October 11, 2001, then the transnational crime became 8 (eight) issues, namely: Terrorism, Illicit Drug Trafficking, Trafficking in person, Money Laundering, Arm Smuggling, Sea Piracy, Cyber Crime and International Economic Crimes include; Illicit drug trafficking, Money Laundering, Terrorism, Arm smuggling, Trafficking in Persons, Sea piracy, Economics crime & currency counterfeiting / Counterfeiting money and Cyber Crime.

#### 1. National Law that could be Applied

The Law Number 5 of 2009 concerning Opposition of the Organized Transnational Crime. Article 5 of the Convention imposed obligation on participating countries in the Convention to carry out criminalization on participation in an organized crime group.

It was said that each participating country must include in its laws and regulations as a criminal acts, both as a criminal offender and as an attempt offender or completion of a criminal act:

- a) Agreeing together with one person or more to commit a serious crime with a purpose that was directly or indirectly related to the effort to obtain financial or material benefits, including an action by a participant in the implementation of an agreement or involvement in an organized crime group;
- b) An action by someone who consciously knew the purpose of the criminal activity of an organized crime group and the purpose of the concerning crime has an active role in the criminal activities of the organized crime group;

#### 2. International Law that could be Applied

UNTOC discussed two substances, namely: The material-substantive legal rule, namely the crimes as found in Articles 5, 6, 8, 9 and 23 concerning jurisdiction (Article 15) and related matters, such as concerning the terms used (article 2), the scope of the entry into force of the Convention (Article 3), the principle of protection and respect for the sovereignty of the participating countries or parties in the Convention (Article 4); The formal-procedural legal rule, namely regarding the procedural matters in handling case, which included international cooperation among participating countries in the Convention, such as Extradition (Article 16), transfer of prisoner (article 17), and mutual cooperation in criminal matters which was also called by mutual legal assistance (Article 18) or other articles relating to international cooperation.

#### ***Outlaw Motorcycle Gangs***

OMGs was an organization whose members use their motorcycle club as channel to commit criminal acts. OMG was a very structured, criminal organization whose members were involved in criminal activities such as violent crime, illegal trade in weapons, illegal drug trafficking. In the Netherland, the violation of this motorcycle gangs was not uncommon (Blokland et al., 2019). There were more than 300 active OMGs in the United States, and were expanding chapter/ branch across countries ranging from a

single branch size/ chapter with five or six members to hundreds of branches with thousands of members throughout the world.

### ***The Development of Outlaw Motorcycle Gangs in Indonesia***

In the 90s to 2000s, certain brand-based motor clubs and more heterogeneous clubs also began to develop rapidly in this era, for example Chopper Bazard MC, Black Angels MC, Harley Davidson Club Indonesia (HDCI), *Ikatan Sport Harley Davidson (ISHD)* (Harley Davidson Sport Association), BMW Club Indonesia, *Ikatan Motor Besar Indonesia (IMBI)* (Indonesian Big Motorcycle Association), *Motor Antique Club Indonesia (MACI)* (Indonesian Antique Club Motor), and others (Arni, 2010). Some of mentioning above may even have existed since the 70s or 80s, but may have been "apparent death" (Smith, 2019).

In Indonesia there were not many foreign clubs that have entered, but still there, which may still be quite fresh in mind was "the fat mexican" aka Bandidos MC, that had received strong rejection from local clubs. This rejection was related to the local concern club about the background of Bandidos MC as one of the outlaw MC in the world that conducted illegal business as a source of their funds. It was feared that the presence of Bandidos MC in Indonesia could become an extension of the hand of their illegal business, this was more because Bandidos members in Indonesia were not typical outlaw bikers whose likes to go in and out of prison. There was also a club from the Netherlands, Satudarah MC.

Satudarah has officially opened the Indonesian chapter. Uniquely in his home country, the Netherlands, many members of the Satudarah MC were descendants of Maluku. Perhaps it was this attachment factor that made Satudarah entered and was more easily accepted. While in Bali, there was already an outlaw club from Australia that has opened a branch there, namely Rebels MC.

The development of OMG in Indonesia was increasingly growing rapidly which came from within Indonesia itself, as well as from outside Indonesia which established chapter/ branch in Indonesia and wanted to widen from each OMG itself.

### ***Outlaw Motorcycle Gangs As Transnational Organized Crime***

Based on the information in UNTOC, the crime committed by OMG fulfilled the criteria for being referred to as transnational crime. It could be seen from the characteristics of OMG itself:

a) It was carried out in more than one country; OMG had a very wide distribution, could be marked to have many branches that were spread in various countries. They also carried out criminal actions that were mostly cross-country, which was marked by the number of their branches abroad to run illegal business.

b) It was carried out in one country but an important part of preparation, planning, orientation or control was carried out in another country; OMG had a preparation that started from the moment of screening members, they could not be directly accepted as member and must go through several levels to become permanent member. In the course, orientation using illegal ideologies was applied in every branch of the OMG throughout the country, which had a similarity with the central OMG.

c) It was carried out within a country but involved an organized criminal group in criminal activity of more than one country; or with a very large number of branches and also the extent of almost evenly distributed throughout the continents of the world, OMG organized its crimes through its branches in each country. OMG always conducted relations among its branches in order to get benefits for OMG itself.

d) It was carried out in one country but had an important effect in another country. OMG had a very important effect, especially the negative effect caused, departing from the intelligence report gangs sourced from the USA which was submitted to the NCB-INTERPOL Indonesia. The role of OMG could be felt very great exemplified in the United States and Europe, violence, murder and the most important was the distribution of drugs, would be increasingly difficult to protect and made the legal enforcement officials was in difficult. While, transnational crime was almost always related to the crime with financial motives, which had an impact on the interests of more than one country. These crimes included drug trafficking, transborder organized criminal activity, money laundering, financial crime, willful damage to the environment, and others.

### ***International Police***

The International Criminal Police Organization (called ICPO) or better known by its electrical telegraph address, INTERPOL, was an organization formed to coordinate cooperation among the police throughout the world. So, INTERPOL was the password used in international communication among members. The ICPO-INTERPOL Headquarters was located in Lyon, France. Until 2012, a number of ICPO-INTERPOL members were 190 countries and the last 3 (three) member countries were Curacao, Saint Marteen and South Sudan.

National Central Bureau (called NCB) was a permanent police institution to carry out international cooperation related to transnational crime. The establishment of the NCB (National Central Bureau) was based on ICPO-INTERPOL Constitution Article 32, that each country must appoint an institution in their country respectively as the National Central Bureau (NCB).

The main duty of NCB-INTERPOL was to guarantee the international exchange of information in the context of crime prevention and investigation.



In this case, several activities which were the responsibility of NCB-INTERPOL could be detailed, including as follows:

- a) Collecting criminal documents and intelligence that had a direct relationship with international police cooperation from their country's sources and circulating them to the Secretary General and other NCBs.
- b) Ensure that the actions or operations requested by the NCB of other country were carried out in that country.
- c) Receiving requests for information, checks, etc. from the NCB of other country and responding to those requests.
- d) Sending a request for international cooperation on court decisions or for the request of the national police concerned to the NCB of other country.
- e) The Head of NCB attended the INTERPOL General Assembly as a delegation from his country and guarantee that the court decisions were carried out in his country.

### ***The Indonesian NCB-INTERPOL***

The position of Indonesian NCB-Interpol was an element of implementing the duties and functions of ICPO-INTERPOL in Indonesia to overcome the international and transnational crime (Rakhmadani et al., 2016). The main duty of NCB-INTERPOL was to eradicate crimes that occurred across countries. Then in developing their duties, Indonesian NCB-INTERPOL divided some of these duties into division or part of the organizational structure of Indonesian NCB-INTERPOL.

### ***The Indonesian NCB-INTERPOL Function and Authority***

The Indonesian NCB-INTERPOL was one of the Bureaus within the organizational structure of the International Relations Division of Indonesian National Police which had the duty to foster, supervise and control the implementation of NCB-INTERPOL's duties in international cooperation in bilateral and multilateral scope. In carrying out their duties, the Indonesian NCB-INTERPOL organized the functions of Manurung, Dwiwarno and Setiyono, (2016):

- a) The implementation of international cooperation in the context of overcoming international/ transnational crime.
- b) The Arrangement of international agreement and implementing international, bilateral and multilateral meeting forums.
- c) The exchange of criminal intelligence information through the INTERPOL and ASEANAPOL network systems;
- d) The technical guidance for the National Police, SLO, STP, and LO Attache NCB-INTERPOL of Indonesia.

### ***The Role of the Indonesian NCB-INTERPOL in Handling Outlaw Motorcycle Gangs***

NCB-Interpol had close links with all relevant institution in the country, because in its implementation procedures NCB-Interpol's duties was related to the authority of various institutions (Lee & Qomariyah, 2018). Based on the Decision of the Indonesian National Police Number Pol.: Skep/203/V/1992 on

May 9, 1992, the Interpol Coordination Team was formed. The Interpol Coordination Team was a non-structural coordination and cooperation forum which was under and was responsible to the Chief of National Police as the Head of NCB-Interpol of Indonesia which in its daily activity was coordinated by the Secretary of the Indonesian NCB-Interpol.

## CONCLUSION

The organized transnational crime that was developing in various countries including Indonesia was Outlaw Motorcycle Gangs. Based on the Decision of the Indonesian National Police Number Pol.: Skep/203/V/1992, the role of the National Central Bureau of International Police in handling transnational crime as an intermediary as mentioned above, obtaining information and data from the National Police and other institution in the country regarding the matters that were needed by INTERPOL, and forwarded the information and the data to the INTERPOL General Secretariat, as well as received the information and the data from INTERPOL and forwarded it to the national police and other institution.

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