

CHAPTER V

CONCLUSION

A. Conclusion

Based on the research results and discussion above, it can be concluded as follows:

1. In the implementation of mutual legal assistance, the provisions of the double criminality principle may be used as basis for refusal of assistance, in the absence of double criminality. In international law, the provisions are contained in Article 18 Paragraph (9) of the United Nations Convention Against Transnational Organized Crime of 2000, Article 46 Paragraph (9) of the United Nations Convention Against Corruption of 2003, and Article 7 Paragraph (3) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. In the Bilateral Treaty between Indonesia and Australia on Mutual Legal Assistance are contained in the Article 4 of the Law Number 1 Year 1999. In Indonesia, the provisions are regulated in Article 6 and Article 7 of the Law Number 1 Year 2006 concerning Mutual Legal Assistance in Criminal Matters.
2. In 2007 the government of Australia submitted a request for assistance to the government of the Republic of Indonesia regarding allegations that Schapelle Leigh Corby has derived a financial benefits from commercially exploiting her criminal notoriety and/or 'Literary

Proceeds' under the Proceeds of Crime Act 2002 Commonwealth of Australia. The request sought bank records, formal documents, and a restraining order on an Indonesia bank account linked to Corby's brother-in-law in Bali. The crime of criminal notoriety and/or literary proceeds is not recognized under Indonesia criminal law, and instead Indonesia adheres to the *drukpersdelict* provisions in Article 483 and Article 484 of the Criminal Code. In addition, this offense was not agreed upon in the list of crimes of the bilateral treaty of the Law No. 1/1999. As a result, the government of the Republic of Indonesia determines that the request for restraining order on bank accounts in Bali was refused, because failed to fulfill the elements of double criminality as a requirement for the fulfillment of mutual assistance request, but the request to find out information about bank accounts, still be provided based on the discretion under reciprocity and good relation. Mutual legal assistance request is partially fulfilled by applying the discretionary principle accordance with the Article 8 Law No. 1/2006 and Article 1 Paragraph (3) Law No. 1/1999.

B. Recommendation

Based on the conclusions above, it is recommended that the government of Australia propose a revision of the 'list of crimes' in the annex of the bilateral treaty between Australia and Indonesia on Mutual Legal Assistance to include a broader range of emerging crimes. This revision would enhance the effectiveness of future mutual legal assistance requests.