

## **The Application of General and Criminal Confiscation Laws in Bankruptcy Cases in Indonesia and Australia**

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### **Abstract**

There is often an intersection between general confiscation and criminal confiscation, one of which is caused by disharmony in confiscation arrangements between general confiscation and criminal confiscation. This study examines the comparison of the application of general and criminal confiscation law in bankruptcy cases in Indonesia and Australia and finds out whether the method of resolving general and criminal confiscation disputes according to Australian bankruptcy law can be applied in Indonesian bankruptcy law. Applying normative legal research, this study revealed that the resolution of disputes between vesting of property in bankruptcy law and confiscation orders in the law of proceeds of crime prioritizes legal certainty. This is evidenced by the provisions of Articles 6C, 58, 58A of the Bankruptcy Act 1966, which provide a detailed explanation of when and at what times there are exceptions to the application of vesting of property to the property of bankrupt debtors. The practice of applying dispute resolution between the institution of confiscation in bankruptcy law and confiscation for proceeds of crime according to bankruptcy law in Australia has been practiced several times by the Commercial Court in Indonesia.

**Keywords:** General Confiscation, Criminal Confiscation, Bankruptcy, Indonesia, Australia

### **Introduction**

The existence of bankruptcy law is not something new for Indonesian society; this is proven by the basic concept of bankruptcy, which is regulated in *Faillissements-Verordening, Staatsblad 1905-217 jo. Staatsblad 1906-348*, hereinafter referred to as S. 1905-217 & S. 1906-348 (Remy, 2002). As time progressed, in 1997, when there was a monetary crisis in Indonesia, the idea arose to improve legislation in the field of bankruptcy, hence the birth of Government Regulation in place of Law Number 1 of 1998 concerning Amendments to the Law on Bankruptcy (Perpu No. 1/1998), which was then enacted into law based on Law Number 4 of 1998 (Budiono, 2018; 112). Due to various obstacles in its implementation, Law Number 37 of 2004 concerning Bankruptcy and

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Postponement of Debt Payment Obligations (PKPU) was born, which is referred to as the Bankruptcy and PKPU Law, which is in effect to date (Nugroho, 2018).

In resolving bankruptcy disputes, there is often conflict between general and criminal confiscation, one of which is caused by disharmony in the confiscation arrangements between general and criminal confiscation. According to the provisions of Article 31 paragraph (2) of the Bankruptcy and PKPU Law, all confiscations that have been carried out are null and void. If necessary, the Supervisory Judge must order them to be annulled. Meanwhile, according to the provisions of Article 39, paragraphs (1) and (2) of the Criminal Procedure Code (KUHAP) regulate objects that can be confiscated by investigators, including objects that are confiscated due to civil cases or bankruptcy. These two articles cause conflicts and problems in their application. As a result, there are two confiscations over the same object. This contradicts Article 436 of the *Reglement op de Rechtsvordering*, which regulates confiscated goods not to be confiscated again.

General confiscation is a form known in positive law in Indonesia, especially in bankruptcy law. Although general confiscation is implemented in bankruptcy law, the legal basis for general confiscation is not regulated in detail in the Bankruptcy and PKPU Law but in Articles 1131 and 1132 of the Civil Code (Sibarani, 2019; 185). Through these provisions, in essence, general confiscation in bankruptcy law aims to prevent creditors holding material security rights from selling the debtor's assets without considering other creditors' interests (PKPU Law). Therefore, general confiscation is an effort to secure all the assets belonging to the bankruptcy debtor (Yanuarsi, 2020; 283).

The criminal law regime also recognizes a confiscation mechanism, which is referred to as criminal confiscation. Criminal confiscation is known in Dutch as "*inbeslagneming*" (Harahap, 2001). Separate provisions in the KUHAP regulate criminal confiscation. Namely, most of it is regulated in CHAPTER V, Part Four, Article 38 to Article 46 of the KUHAP, and a small part is regulated in CHAPTER XIV (Prabowo, 2021; 134-135). Furthermore, criminal confiscation is defined as a series of actions by investigators to take over or keep movable or immovable, tangible or intangible objects under their control for evidentiary purposes in investigations, prosecutions, and trials. Confiscation is an act of "coercive effort" carried out by investigators that contains humiliation and rape and is contrary to human rights values. Still, on the other hand, the law justifies confiscation for the public interest in resolving criminal cases (Afhami, 2021; 327).

Even though the two forms of confiscation, namely general confiscation and criminal confiscation, both have good aims for legal certainty and law enforcement in Indonesia, there has been no agreement among law enforcers regarding the

relationship between general confiscation and criminal confiscation, and according to AKBP W Marbun, who at that time represented the Legal Division of the Republic of Indonesia Police, stated that criminal confiscation took precedence over general confiscation in bankruptcy. Criminal confiscation could still be carried out even though the curator had done general confiscation, and this was under the principle of public legal interests taking precedence over civil law. Meanwhile, according to M. Hadi Subhan, general confiscation has a higher position than criminal confiscation. This is because the substance of bankruptcy is a general confiscation of all the debtor's assets.

The conflict between the application of law between general confiscation and criminal confiscation does not only occur in Indonesia. In practice, this also occurs in other countries, one of which is Australia. The Federal Court of Australia has several times resolved cases related to the relationship between confiscation in bankruptcy law as regulated in the Bankruptcy Act 1966 and confiscation of the proceeds of crime regulated in the Proceeds of Crime 2002, as contained in the Federal Court of Australia Decision [2020] FCA 1065, between David Charles Quin as Trustee of Kitchener Crespin's bankruptcy estate and Spencer John Bitcon, Director of Consumer Affairs Victoria, Victorian Civil And Administrative Tribunal. This case relates to a bankrupt property that was involved in a household building dispute. The defendant was charged and found guilty of causing criminal property damage, giving rise to a restraining order for the bankruptcy estate (The Decision of Federal Court of Australia [2020] FCA 1065).

The intersection between general confiscation in bankruptcy law and criminal confiscation does not only occur in Indonesia but also other countries such as Australia. This fact is interesting to study further to examine how Australian bankruptcy law handles the tangential point between confiscation in bankruptcy law ("vesting of property") and confiscation of objects resulting from crime ("confiscation order"), as well as finding out whether this settlement can be applied to bankruptcy law in Indonesia. The present study is aimed at analysing the comparison between Indonesia and Australia in the application of general confiscation law and criminal confiscation law in bankruptcy cases and the possibility of applying the methods for resolving general confiscation and criminal confiscation disputes according to Australian bankruptcy law to Indonesian bankruptcy law.

### **Research Method**

This study applied normative legal research focusing on the application of general confiscation law and criminal confiscation law in bankruptcy cases in Indonesia and Australia. To find out whether the resolution of general

confiscation and criminal confiscation disputes in Australian bankruptcy law can be applied to bankruptcy law in Indonesia, this study employed both statutory and case approaches, as well as a comparative approach. The authors selected Bankruptcy & PKPU Law, Law Number 8 of 1981 concerning the Criminal Procedure Code, the Decision of the Federal Court of Australia [2020] FCA 1065, and the Appeal Decision of the Federal Court of Australia [2006] FCA 1721 as the primary legal sources. These sources then were strengthened by various journals or books on the related topics to have a comprehensive understanding on the application of general and criminal confiscation in bankruptcy cases.

### **The Application of General Confiscation and Criminal Confiscation Laws in Bankruptcy Cases in Indonesia and Australia**

Article 1 number 1 of the Bankruptcy and PKPU Law explains that what is meant by Bankruptcy is a general confiscation of all the assets of a bankrupt debtor whose management and settlement are carried out by a curator under the supervision of a Supervisory Judge. General confiscation is not explained further in the Bankruptcy and PKPU Law, but Article 1131 of the Civil Code explains that:

"All movable and immovable assets belonging to the debtor, both existing and future, become collateral for the debtor's obligations."

Article 1132 of the Civil Code provides an explanation that:

"The goods become joint collateral for all creditors against whom the proceeds from the sale of the goods are divided according to the proportion of their respective receivables unless there are valid reasons for priority between the creditors."

What is called a general confiscation is a confiscation carried out on assets belonging to a bankrupt debtor with the aim that the proceeds from the sale of said assets are distributed fairly and proportionally to creditors by the number of receivables owned unless there is a reason for priority among them (Aprita, 2018). It is said to be a general confiscation because the confiscation is intended not only for a few creditors but all creditors in general to avoid confiscation attempts by individual creditors (Hartini, 2002). Thus, general confiscation can be interpreted as a form of confiscation in the bankruptcy process which is carried out to secure the assets of the bankrupt debtor based on a commercial court decision made by the Curator or the Inheritance Property Office to protect the rights of creditors based on the order of distribution based on three principles, namely the *paritas creditorium* principle, the *pari passu prorata parte* principle, and the principle of structured creditors, which will be explained as follows (Nola, 2018; 222):

- 1) The principle of *Paritas Creditorium* means that all assets belonging to the bankrupt debtor, both movable and immovable, currently existing and objects that the debtor will own are bound by the debtor's obligations (Disemadi, 2021; 24).
- 2) The principle of *Pari Passu Prorate Parte* means that assets owned by bankrupt debtors are joint guarantees for creditors and must be distributed proportionally between them unless some have priority among creditors (Puspitasari, 2021;745).
- 3) The principle of Structured Creditors, meaning that it relates to creditors that must take priority, including preferred creditors, separatists, and finally, concurrent creditors (Nadhirah, 2019; 308).

Criminal law also has a confiscation institution called criminal confiscation. According to Article 1 number 16 of the KUHAP, what is meant by confiscation is a series of actions by investigators to take over or keep under their control movable or immovable, tangible or intangible objects for evidentiary purposes in investigation, prosecution, and trial. Roni Pandiangan stated that criminal confiscation is a confiscation in public law because the essence contained in this confiscation is that goods are seized and controlled by the state for the evidentiary process in a criminal dispute (Pandiagaan, 2022; 4053). This confiscation is then carried out as a form of securing assets related to the case being investigated or prosecuted (Al Hakimi, 2023; 241).

Separate provisions in the KUHAP regulate the institution of confiscation in criminal law. Namely, most of it is regulated in CHAPTER V, Part Four, Articles 38 to Article 46 of the KUHAP, and a small part is regulated in CHAPTER XIV (Prabowo, 2021; 134-135). However, in its development, criminal confiscations are not only regulated in the KUHAP but also in certain special laws, such as those contained in Law Number 7 of 1955 concerning Economic Crimes and Law Number 3 of 1971 concerning the Eradication of Corruption Crimes (Pandiagaan, 2022; 4053). The objects that can be subject to criminal confiscation include the following (Adhia, 2021; 227)):

- 1) Objects or bills, whether in whole or in part, are suspected to have been obtained by the suspect or accused of criminal acts or the proceeds of criminal acts;
- 2) Objects that have been used directly to commit a criminal offense or to prepare for it;
- 3) Objects used to obstruct criminal investigations.
- 4) Objects that are specifically made or intended to commit criminal acts;

- 5) Other objects that have a direct connection with the criminal act committed.

As a general confiscation according to the Bankruptcy & PKPU Law, especially in Article 31 paragraph (2), it is stated that all confiscations that have been carried out are forfeited, and if necessary, the Supervisory Judge must order their expunction (Nainggolan, 2022; 212)). The phrase "All confiscations" is not explained further in the Bankruptcy & PKPU Law, nor is it clear whether certain forms of confiscation are excluded from this provision. This is because there are several types of confiscation institutions according to positive law in Indonesia, such as revindication confiscation, marital confiscation, conservatorship confiscation, adjustment confiscation, execution confiscation, and criminal confiscation (Hapsah, 2016; 1). Based on *a contrario*, there is no exception for any confiscation institution, or in other words, the phrase shows the position or hierarchy of general confiscation above other confiscation institutions if general confiscation has been placed on an object, namely the bankrupt debtor's assets (Astuti, 2014; 65).

However, it is often encountered in several bankruptcy cases regarding disputes between general confiscation institutions and other confiscation institutions, such as criminal confiscation institutions (Tambunan, 2019; 172). For example, in the case between the PT Seruni Prima Perkasa Curatorial Team (In Bankruptcy) and the Head of the Central Java High Prosecutor's Office. Previously, PT Seruni Prima Perkasa (In Bankruptcy) had been declared bankrupt through Decision Number 29/PDT.Sus-Pailit/2018/PN.Smg dated December 19, 2018, and obtained a decision from the Panel of Judges to carry out a general confiscation of all assets of the bankrupt debtor, including a plot of land along with everything above it covering an area of 722 m<sup>2</sup>. Furthermore, on October 28, 2022, the Central Java High Prosecutor's Office placed a criminal confiscation on this plot of land based on Determination Number 21/Pen.Pid.Sus-TPK/9.2022/PN.Smg.

Regarding this case, the Curator Team has submitted a Miscellaneous Lawsuit to the Head of the Central Java High Prosecutor's Office, which has been decided by the Panel of Judges at the Commercial Court through Decision Number 4/Pdt.Sus-Gugatan Lain-Lain /2023/PN Niaga Smg, stating that the plot of land and everything above it covering an area of 722 m<sup>2</sup> is the bankruptcy assets of PT Seruni Prima Perkasa (In Bankruptcy). However, even though the Commercial Court at the Semarang District Court has given a decision, there has been no action to return bankruptcy assets by the Central Java High Prosecutor's Office, instead through Case Decision Number 16/Pid.Sus-TPK/2023/PN Smg. The judges decided that the land object would continue to be used as evidence in another case.

Differences in the application of the law, as in the example above, are caused by various factors, one of which is the disharmony of general confiscation provisions as regulated in Article 31 paragraph (2) of the Bankruptcy & PKPU Law towards criminal confiscation provisions as regulated in Article 39 paragraph (1) and paragraph (2) of the KUHAP, which states that objects investigators can confiscate include objects that are confiscated due to civil cases or bankruptcy. The disharmony of general confiscation and criminal confiscation rules ultimately gives rise to different interpretations between one law enforcer and another. Examples of differences of opinion among legal practitioners and academics regarding general and criminal confiscation are as follows:

1. According to the Deputy Ministry of Law and Human Rights of the Republic of Indonesia (Wamenkumham RI), Edward Omar Sharif Hiariej stated that the position of criminal confiscation takes precedence over general confiscation. This takes into account the character of criminal law as a law with a public dimension so that it has a higher position compared to private law;
2. According to M. Hadi Subhan, general confiscation has a higher position compared to criminal confiscation. This is because the substance of bankruptcy is a general confiscation of all the debtor's assets;
3. According to AKBP W Marbun, who at that time represented the Legal Division of the Republic of Indonesia Police, stated that criminal confiscation took precedence over general confiscation in bankruptcy. Criminal confiscation could still be carried out even though the curator had done general confiscation. This was under the principle of public legal interests taking priority rather than civil law;
4. According to Jimmy Simanjuntak, General Chair of the Indonesian Curators Association (AKPI), he stated that bankruptcy and PKPU are not just a private domain that prioritizes the interests of business actors. More broadly than that, bankruptcy also prioritizes the interests of the state, one of which is through taxes, which act as preferred creditors. Therefore, this discourse does not only debate which confiscation should take precedence but there needs to be a conclusion to stop this difference of opinion.

The lack of understanding among law enforcers regarding the application of general confiscation and criminal confiscation in Indonesia has created uncertainty in its implementation. This contradicts the theory of legal objectives put forward by Gustav Radbruch, primarily legal certainty (*Rechtsicherheit*) (Mertokusumo, 2015).

The conflict between bankruptcy law and criminal law, especially about confiscation institutions, occurs not only in Indonesia but also in Australia. Bankruptcy law in Australia is regulated in the Bankruptcy Act 1966, especially in

Article 5, which states that “bankrupt means a person against whose estate a sequestration order has been made; or who has become bankrupt under the presentation of a debtor's petition”. According to Australian bankruptcy law, bankruptcy is defined as the condition of an individual or legal entity whose property has been declared bankrupt or bankrupt because the debtor himself requested it. On the other hand, criminal confiscation institutions, especially those relating to objects resulting from crime, are regulated in the Proceeds of Crime 2002. This regulation, which came into effect in 2003, is a legal instrument used to recover assets obtained from the proceeds of crime. The existence of this regulation is an effort by the Australian Government to respond to recommendations from the Financial Action Task Force (FATF-GAFI) and as a follow-up to ratifying the United Nations ("UN") Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1992, the UN Convention against Transnational Organized Crime and its Protocol in 2004, and the UN convention against corruption in 2005 (Australian Institute of Criminology, 2018).

It can be seen that the term used for confiscation of bankruptcy assets is vesting of property. Even though the terms used between Indonesian and Australian bankruptcy laws are different, in principle, vesting of property and general confiscation are the same as institutions for confiscating property belonging to bankrupt debtors. Vesting of property is further regulated in Article 58, paragraph (1) letters a and b of the Bankruptcy Act 1966, which explains that:

Subject to this Act, where a debtor becomes a bankrupt:

1. the property of the bankrupt, not being after-acquired property, vests forthwith in the Official Trustee or, if, at the time when the debtor becomes bankrupt, a registered trustee becomes the trustee of the estate of the bankrupt by virtue of section 156A, in that registered trustee; and
2. the after-acquired property of the bankrupt vests, as soon as it is acquired by, or devolves on, the bankrupt, in the Official Trustee or, if a registered trustee is the trustee of the estate of the bankrupt, in that registered trustee.

According to Australian bankruptcy law, if the subject of these regulations is in a state of bankruptcy, any assets of the bankrupt debtor either existed before the bankruptcy declaration was made or after the bankruptcy declaration was made. When a debtor goes bankrupt, they are given protection from unsecured creditors. However, the bankrupt debtor's assets, subject to certain exceptions, are transferred to the trustee or official trustee in bankruptcy, who can sell them and use the proceeds to pay creditors (Bromberg, 2018; 3). However, there are two notes in the provisions above, which basically state that there are limitations to the application of Article 58 paragraph (1) letters a and b if there is a confiscation in the legal



provisions of the proceeds of crime as regulated in the Proceeds of Crime 2002. Therefore, the second note declares that:

Even if the property has vested under this section, it may, under the Proceeds of Crime Act 2002:

1. become subject to a restraining order; and
2. be taken into account in making a pecuniary penalty order and
3. become subject to a charge to secure the payment of an amount under a pecuniary penalty order if it is subject to a restraining order; and
4. be dealt with by the Official Trustee if it is subject to a restraining order and a court has directed the Official Trustee to pay the Commonwealth an amount under a pecuniary penalty order out of property subject to the restraining order.

To address the vesting of property at the same time as the confiscation of objects resulting from crime, such as a restraining order or forfeiture order, Article 58 A of the 1966 Bankruptcy Act regulates that if there is a restraining order or forfeiture order that has been in effect before the decision to declare bankruptcy is imposed, the provisions for vesting of property as stipulated in Article 58 paragraph (1) cannot be implemented. However, according to Article 6 C, a restraining order or forfeiture order will end if the order is no longer in effect, the court excludes the property from the confiscation order, or if the order is a detention order, the court excludes the property from confiscation which will or may result from the conviction of an infringement. This means that it is clear that in the event of a dispute between the vesting of property carried out by either the trustee or official trustee and the implementation of a restraining order or forfeiture order, the court has the authority to determine whether the object of property belonging to the bankrupt debtor can be excluded from confiscation of the object of the crime or not.

One of the practices for implementing these provisions can be found in the Federal Court of Australia Appeal Decision [2006] FCA 1721, between Dr Suman Sood and Crown Diagnostic Imaging Pty Ltd. This case relates to whether a restraining order based on Article 18 Proceeds of Crime 2002 effectively delays the implementation of a decision that has not yet been implemented against a party subject to a bankruptcy order ("act of bankruptcy") as regulated in Article 40 paragraph (1) letter (g) and Article 41 paragraph (3) letter (b) Bankruptcy Act 1966. In his considerations, the judge explained that if a person becomes bankrupt according to the Bankruptcy Law, then in general, the trustee in bankruptcy has the right to order that he be registered as the owner of property in bankruptcy. After that, the trustee is legally entitled to the vacant possession of the property.

Apart from that, there is also the Federal Court of Australia Decision [2020] FCA 1065, between David Charles Quin as Trustee of Kitchener Crespins

bankruptcy estate and Spencer John Bitcon, Director of Consumer Affairs Victoria, Victorian Civil and Administrative Tribunal. This case relates to a bankrupt property involved in a household building dispute. The defendant was charged and found guilty of causing criminal damage to property, giving rise to a restraining order for the bankruptcy estate. The judge, in his decision, explained that the restraining order on the assets belonging to the bankruptcy debtor, namely Kitchener Crespin, had already been imposed before the bankruptcy declaration was made, so according to Article 58, no “vesting of property” could be carried out on these assets.

Based on these two examples of the application of resolution to disputes between vesting of property in bankruptcy law and confiscation orders in crime proceeds law, it is clear that legal certainty is prioritized. This is proven by the provisions of Articles 6C, 58, 58A of the Bankruptcy Act 1966, which provide a detailed explanation of when there are exceptions to the application of vesting of property to assets belonging to bankrupt debtors and provide solutions if there is a dispute between the two in the form of the court's authority to exclude said assets from restraining orders or forfeiture orders. Apart from that, through these two case examples, it can be seen that the Australian Federal Court Judges are consistent in applying the law, especially when there is a dispute between the two confiscation institutions. This is proven by the absence of differences of opinion in the application of vesting of property as stipulated in Articles 58 and 58 A of the Bankruptcy Act 1966. The absence of differences among judges is not interpreted as something negative because minimizing differences of opinion means that the provisions regulated in the Bankruptcy Act 1966 prioritize the principle of certainty and close down the possibility of interpretations that conflict with these rules (Julyano, 2019; 20). This is in accordance with John Austin's opinion that legal certainty is the ultimate destination of legal positivism, where achieving legal certainty itself requires a separation between law and morals so as to produce a logical, permanent, and closed system (Putro, 2011).

### **The Application of General Confiscation and Criminal Confiscation Dispute Resolution Methods According to Australian Bankruptcy Law in Indonesian Bankruptcy Law**

The method of resolving vesting of property disputes in bankruptcy law is by confiscation order in crime proceeds law through Articles 58 and 58 A of the Bankruptcy Act 1966, which prioritizes the principle of legal certainty. This is because the settlement method used is a time approach (Prayogo, 2016; 194). Thus, it is the confiscation institution that is used first, even though in the regulations, the court has the authority to exclude said assets from the confiscation order. The

question arises as to whether this settlement method can be applied to general confiscation and criminal confiscation disputes in bankruptcy cases in Indonesia. In principle, the settlement method as regulated in the Bankruptcy Act 1966 in Australia has been applied in several bankruptcy cases in the Commercial Court, such as in Decision Number 4/Pdt.Sus-Gugatan Lain-Lain/2023/PN Niaga Smg. The Panel of Judges at the Commercial Court considered the fact that a plot of land and buildings covering an area of 722 m<sup>2</sup> had previously been entered and registered as bankruptcy assets of PT Seruni Prima Perkasa (In Bankruptcy). Thus, in their decision, the Panel of Judges stated that the plot of land and everything on it is the bankruptcy assets of PT Seruni Prima Perkasa (In Bankruptcy).

Through Decision Number 1533 K/Pdt.SUS-Pailit/2017 relating to Miscellaneous Lawsuits between the Attorney General of the Republic of Indonesia against the Curator team of PT Meranti Maritime (In Bankruptcy) and Henry Djuhari. The Panel of Judges considered that the two plots of land and the buildings on them belonging to the bankrupt debtor were not the result of a criminal act or had a direct connection to the criminal act of corruption committed by the bankrupt debtor because the bankruptcy assets had been obtained long before the crime of corruption was committed. Hence, there was no urgency or relevance to blocking and confiscation. Thus, in practice, the implementation of dispute resolution between confiscated institutions in bankruptcy law and confiscation for the proceeds of crime according to bankruptcy law in Australia can be applied in Indonesia. Therefore, several of these court decisions can, in principle, become jurisprudence to resolve disputes between general confiscation and criminal confiscation in bankruptcy cases.

### **Conclusion**

Legal certainty is prioritized in the application of resolution to disputes between vesting of property in bankruptcy law and confiscation orders in crime proceeds law. This is proven by the provisions of Articles 6C, 58, 58A of the Bankruptcy Act 1966, which provide a detailed explanation of when and when there are exceptions to the application of vesting of property to assets belonging to bankrupt debtors as well as providing solutions if there is a dispute between the two in the form of the court's authority to exclude said assets from restraining orders or forfeiture orders. Apart from that, it is known that the Australian Federal Court Judges are consistent in applying the law, especially when there is a dispute between the two confiscation institutions. This is evidenced by the existence of the same understanding regarding the implementation of vesting of property as stipulated in Articles 58 and 58 A of the Bankruptcy Act 1966 by the Judges at the Australian Federal Court, thereby creating legal certainty as regulated in the

Bankruptcy Act 1966. In practice, dispute resolution between confiscated institutions in bankruptcy law and confiscation for proceeds of crime according to bankruptcy law in Australia can be applied in Indonesia. Therefore, several court decisions, in principle, can become jurisprudence to resolve disputes between general confiscation and criminal confiscation in bankruptcy cases.

This study proposed two recommendations as follow:

- There is a need for detailed and clear regulations between general confiscations as regulated in the Bankruptcy & PKPU Law and KUHAP so as to bring about harmonization of statutory provisions.
- Law enforcement officials need to have an understanding in resolving disputes between general confiscation and criminal confiscation. It is important to do so as not to give rise to various interpretations that actually create uncertainty regarding the application of the relationship between general confiscation and criminal confiscation.

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