



**THE LEGAL ANALYSIS OF MONEY LAUNDERING
AND FINANCING TERRORISM LEGISLATION IN
MALAYSIA AND YEMEN**

BY

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degree of Master of Comparative Law**

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْخِلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا

فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ¹

“And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]”.

¹ Al-Quran, Al-Baqarah: 188.

ABSTRACT

Money laundering is the process used to hide the original source of the proceeds, which are gained from illegal activities by many complicated transactions. As a result of that, the dirty money will reappear in legitimate form. Money laundering and terrorism financing crimes have become a global issue nowadays and threaten the function of the financial and economic system. Malaysia and Yemen, like other countries, are also concerned with this and spend a lot of effort to combat these crimes. However, studies show that these crimes are still increasing year after year. This study aims to find out the reasons for the continuity of these crimes despite the existence of laws, international treaties and cooperation among the various countries to combat this crime of money laundering and terrorism financing. Many studies have been done with regard to money-laundering and financing of terrorism but all these studies discussed it from different perspectives and no study discusses the existing laws prevailing in both Malaysia and Yemen to find the loopholes and strengths in these laws. As a result of that, this thesis focuses on the prevailing laws in Malaysia and Yemen and analyses the provisions of AMLAFTA 2001 in Malaysia and AMLATF 2010 in Yemen, by using qualitative approach method to obtain good results. The study found that the two pieces of legislation on anti-money laundering and counter financing terrorism (AML/CFT) in Malaysia and Yemen seems to be, to a great extent, in *pari materia* to one another as they originated from the same source, namely the Financial Action Task Force's (FATF) Forty Recommendations.. The study also gives some recommendations toward further improving and upgrading the existing AMLATFA in Malaysia and AMLATF in Yemen.

خلاصة البحث

جريمة غسل الاموال هي الجريمة العابرة للحدود. هي سلوك اجرامي ضد العادات والتقاليد و المبادئ الاسلامية فهي مجموعة من العمليات المالية المتداخلة للأموال الغير مشروعة والتي تم اكتسابها من أنشطة اجرامية مختلفة والغرض اخفاء المصدر الاساسي لهذه الاموال وإظهارها في صورة اموال مكتسبة من مصادر مشروعة. و لإتمام هذه العملية تمر هذه الاموال القذرة بعدة مراحل التغطية، الادمج، مرحلة اسباغ الصفة الشرعية لهذه الاموال. وتعد جريمة غسل الاموال من اكثر الجرائم خطورة لما لها من تأثير كبير سواء على الفرد أو على المجتمع ، سواءً من الجانب الاقتصادي والاجتماعي أو الأمني . وتمثل الآثار الاقتصادية لهذه الجريمة من اهم أخطر الآثار، لما لها من تأثير كبير على الجهاز الاقتصادي القومي ، وترتبط جريمة غسل الأموال بالدخل القومي عن طريق حرمان البلاد من العوائد الإيجابية التي يمكن أن يحصل عليها المجتمع ، ولا يخفى أن عملية غسل الأموال يمكن أن تؤدي إلى زيادة معدلات الاستهلاك بشكل يفوق الدخل القومي، ويساهم هذا في حدوث خلل في الاقتصادي الهيكلي وتعتبر جرائم غسل الأموال من أخطر جرائم عصر الاقتصاد الرقمي، وقد استحوذت على اهتمام الباحثين وهناك العديد من الدراسات في هذا الباب ولكن من جوانب حيث انه لم توجد اي دراسة تطرقت الي دراسة القوانين وتحليل النصوص القانونية لقانوني مكافحة غسل الاموال وتمويل الارهاب . وفي هذا البحث تم التركيز على تحليل النصوص القانونية في كلا من القانونين 2001 AMLAFTA ماليزيا و 2010 AMLATF اليمن. لاكتشاف نقتط الضعف والقوة في كلا من القانونين. وقد استخدمت في هذه الدراسة المنهج النوعي للتوصل الى افضل النتائج. وقد وجدت من خلال هذه الدراسة ان كلا من قانوني جريمة غسل الاموال و مكافحة الارهاب في كلا من ماليزيا واليمن متشابهين تماما وذلك لان كلا من القانونين لهما نفس المصدر وهو التوصيات الاربعين ل.ل financial Action task force. هذه الدراسة ستقدم بعض التوصيات التي تساعد في تطوير القانون ومنحه قوى اكبر لمحاربة جريمة غسل الاموال ومكافحة الارهاب.

APPROVAL PAGE

I certify that I have supervised and read this study and in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for degree of Master of Comparative Law.

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DECLARATION

I hereby declare that this dissertation is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or currently submitted as a whole for any other degrees at IIUM or other institutions.

Najlaa Abdulrahman Alkhazzan

Signature

Date:

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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*I wish to dedicate this thesis to my dearest mother, the one who brightened my life and
without whom I am nothing.*

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I would like to start this section with the first word revealed in the Quran “Read”.

“Read: in the name of your Lord who created. He created man from a clot. Read, and your Lord is the Most Honorable. Who taught with the pen. He taught man what he did not know¹.”

This work is a result of more than one year of hard work and dedication during which I have been supported and accompanied by many, whom I would like to express my sincere appreciation and acknowledgement here. First and foremost, I would like to pay deepest gratitude to Almighty Allah who guided me always and gave me patience to complete this dissertation successfully.

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¹ Surah 'Alaq No. 96 (Verses 1-5)

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CHAPTER ONE

INTRODUCTION

1.1 OVERVIEW

This introductory chapter consists of ten (10) sections which include this overview. Other sections of this chapter are: (i) background of the research, (ii) problem statement, (iii) research questions, (iv) objectives of the research, (v) methodology of the research, (vi) scope and limitation of the research, (vii) hypothesis of research, (viii) literature review and (viiii) organization of the research. Following this section is the background of the research which gives the contextual information of this research.

1.2 BACKGROUND OF THE RESEARCH

Consistently, massive amounts of funds in the form of cash are produced every year from illicit exercises. For example, drug trafficking, human sneaking, robbery, arms trafficking and degenerate practices by criminals all over the world. The offenders who create these funds then need to transform this money into the white money in order to avoid any suspicion by the legitimate financial system, which is mostly done by converting the cash into other forms. This conversion of illegal money to other forms does not only make this money useable, but it makes a distance between the criminal exercises and the funds.

Money laundering offence is one of the most important economic crimes, which is linked to organized crimes. It is a global phenomenon that affects all the countries in the world, and crime which stimulates the profits of illegal activities to

become legal profits. Money-laundering is a technique by which the criminals masquerade the illegitimate origins of their possessions and shield their asset bases in order to keep away from being caught by the law enforcement agencies, and counteract leaving a trail of their implicating proof¹. The act of money laundering has bad effects on the national economy, which mixes the illegitimate money with illicit money and invests it in legal investment to mislead the security authorities and to escape from legal liability.

Money laundering is the way people hide their illegal wealth to prevent seizure by the authorities. However, some criminals resort to this trick to legitimize their dirty money. Furthermore, some criminals use money laundering to increase their profits, by investing their wealth in legal investment. The negative impacts of money laundering cannot be avoided and severely influence the society. Due to such act of money laundering, the criminals would be encouraged to commit more crimes and indirectly expand the black economy. In addition, it helps to diminish the valid taxes which the country should gain, and indirectly cause the government to lose control of the development of economy.

There are no proximate data as for the exact amount of money laundered around the world. According to the International Monetary Fund (IMF), it is estimated that the annual sum of money laundered can make up around 3-5 % of world output.² Money laundering crime has been deployed in Islamic societies which the Islamic religion came to regulate human relations and their rights and duties. Islam recommends us to use all legal ways in our lives and prohibits illegal gains. Money laundering is an issue that has gained increasing importance following the events of

¹ United Nation Office on Drugs And Crime: Introduction To Money Laundering <<http://www.unodc.org/unodc/en/money-laundering/introduction.html>> accessed on 5th Nov 2012.

² Norhashimah Mohd Yasin, Legal Aspect of Money Laundering in Malaysia from the Common Law Perspective, *LexisNexis*, (2007), p. 1.

9/11. Governments are especially keen on keeping a vigil on the movement of money that is suspected of being utilized in the financing of terrorists. More generally, money laundering is the name given to the process by which the origin of illicit funds is disguised. In majority of countries, money laundering is regarded as a crime. The means in obtaining the money are associated with illegal activities or criminal activities. The frequent sources of the money are usually gambling, drug trafficking, and prostitutions. Additionally, the illegal activities such as arms trade, embezzlement and smuggling are also associated with money laundering. Financial market is usually used in making such dirty money to legal one before the eyes of laws. By having such dirty money as legal, It is eventually, used to support the crimes which are the underlying activities in obtaining such money.

The process in cleansing the dirty money involved three important stages which are known as: (a) placement, (b) layering and (c) integration. Such process of cleansing is carried out to variety of financial institutions or companies such as banks and non-bank financial institution (NBFI). Frequently, such activities of cleansing the dirty money are done in those countries which do not have proper monitoring financial system or legal framework. Among the famous NBFI which are used for such activities of money laundering are listed as follows:

- (a) Real estate's companies;
- (b) Securities brokers or intermediaries;
- (c) Leasing companies; and,
- (d) Insurance companies.

In conducting money laundering, the said money will be channeled by the launders into various channels as listed above. This is known as the Placement stage. For example, the dirty money is deposited into the banks through normal transaction

of accounts. This is carried out in small amount as to avoid suspicion from the responsible authority. After the placement stage, the launders move to the second stage which is known as layering stage.

At the Layering stage, the dirty money is transferred by the launders into other accounts which are usually set up in other country, in order to move such dirty money from its source. Such layering stage is carried out so as to cut off the link between the dirty money and the source of such money which usually comes from criminal activities. Without delay, the Integration stage is conducted after the Layering stage. At this stage, the money is brought back to the first country that the launders obtain so that the sources of the money would not be questioned. By having such stages, the cleansing of the dirty money is completed. The existence of money laundering undeniably can have negative impacts on the country's development. The cleansing process of dirty money indirectly contributes to increase of crimes. The country's economy could suffer due to the diversion of funds during the Layering stage. The stability of currency and flow of capital within the financial system are eventually affected by such process. Money laundering adversely affects the economy, financial, social and political structured of Malaysia and Yemen, which stimulates illegal activity to become legal activity in the eyes of the public.

Allah (S.W.T) says in the -Qur'an Surah al-Baqarah verse 188: "And do not eat up your property among yourself unjustly (even) a little of other people's property". The word unjustly in this verse refers to property incurred through illegal ways such as stealing, deceiving, smuggling, cheating.³

The aim of this research is to study money laundering crime and financing terrorism from all of its aspects and to show its impacts and the exerted effort to fight

³ Zulkifli Hasan "Roles of the Islamic Financial Institution in Combating Money Laundering: Legal and Shariah Perspectives" (2008), p.8.

it in Malaysia and Yemen. Furthermore to address the size of this issue and the methods used in laundering the money and financing terrorism. Since money laundering is a crime that all the world is states suffer from its negative impacts on social, economic and political aspects in any state.

The spread of such crime can be attributed to various reasons that may be subjective of procedural; among them is the failure of national legislation or the absence of cooperation between the concerned parties. Due to the impact of such international crime, regional and local efforts were needed to fight this crime through issuing special legislations. In addition, to the analysis of the provisions as codified in Anti-money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA) in Malaysia vis-a-vis the Anti-Money laundering and Anti-Terrorism legislation in Yemen, it was found that the weakness in the Act which aided the criminals to commit money laundering crime.

1.3 PROBLEM STATEMENT

Money laundering crimes have significant impacts on many countries, including Yemen and Malaysia. Despite the issuance of international and national legislation, this crime is rising and spreading through various ways. In this age of technology and globalization, money laundering is committed by different ways and the competent authorities try to prevent this crime. Every country enacted law to prevent this serious crime nevertheless this crime is still committed in every country, which raises a lot of questions about the effectiveness of the laws to eliminate this crime.

1.4 RESEARCH QUESTIONS

There are many questions addressed in this research as follows:

1. What are the provisions of AMLATFA 2001 (Malaysia) and AMLATF law 2010 (Yemen)?
2. How AMLATFA 2001 (Malaysia) and AMLATF laws 2010 (Yemen) are enforced?
3. Are there any loopholes/weaknesses as well as strengths of AMLATFA 2001 (Malaysia) and AMLATF law 2010 (Yemen)?
4. What are the similarities and differences between AMLATFA 2001 (Malaysia) and AMLATF laws (Yemen)?

1.5 OBJECTIVES OF THE RESEARCH

This study seeks to achieve the following objectives:

1. To examine the provisions of AMLATFA 2001 (Malaysia) and AMLATF law 2010 (Yemen);
2. To determine the extent of enforcement of AMLATFA 2001 (Malaysia) and AMLATF law 2010 (Yemen)
3. To discuss any loopholes and strengths of AMLATFA 2001 (Malaysia) and AMLATF law 2010 (Yemen);
4. To discover the *pari materia* elements and differences between AMLATFA 2001 (Malaysia) and AMLATF law (Yemen).

1.6 METHODOLOGY OF THE RESEARCH

In order to achieve the above mentioned objectives, the researcher examined the regulatory framework of these selected countries namely, Malaysia and Yemen by

looking at AMLATFA in both these countries. The study will analyses both laws to find out the strengths and weakness of AMLATFA in Malaysia and Yemen. The research is qualitative or library-based research and the main references for this research are both primary and secondary sources, which consist of statutes or legislation, books, articles as well as website materials. In addition, series of interviews were conducted with a judge in Yemen by (Mohammed Mahmud Bazi) who is the President of the Commercial Court in Yemen as well as with Mr. Muhamad Nazri Bin Shidon, the financial investigator from the Central Bank of Malaysia.

1.7 SCOPE AND LIMITATIONS OF THE RESEARCH

This study focused on the examination of AMLATFA 2001 as promulgated in Malaysia and AMLATFA 2010 as legislated in Yemen. It is essential to critically analyses the strength and weaknesses of anti-money laundering and countered financing of terrorism (AML/CFT) legislation in both countries. This study also scrutinized the enforcement and effectiveness of the said legislations in both countries by viewing any interconnection with other relevant and related laws or policies. Without neglecting, this study also evaluated whether there is any sufficient reforms or remedy as partaken by the said legislations in combating money laundering and terrorism financing in Malaysia and Yemen.

1.8 HYPOTHESIS OF THE RESEARCH

1. The legislation on anti-money laundering and counter financing of terrorism (AML/CFT) are important for Malaysia and Yemen;

2. The legislation on anti-money laundering and anti-terrorism financing in Malaysia and Yemen are in *pari materia* to one another.
3. The AML/CFT legislation in Malaysia and Yemen are not free from loopholes and weaknesses that need urgent reforms.

1.9 LITERATURE REVIEW

The existence of anti-money laundering and anti-financing of terrorism legislations are deemed essential and important for developed and developing countries. Malaysia and Yemen as among the progressive developing countries of the world are in need to protect their citizens from social and economic deviance. The money laundering activity and terrorism financing are not only going to tarnish the good reputation of the countries on the world stage, additionally such activities generate illegal profits from immoral businesses such as drug trafficking, prostitutions and any other illicit activities that could to destroy the very core values of obtaining a harmonious society at large.

Many studies have been done about money laundering crime and the effects of this crime in society. Prof Dr. Norhashimah Mohd Yasin in her book (2007).⁴ She discusses the Anti-Money laundering and Financing Terrorism in Malaysia, which covers the concept of Money laundering and examination on the various provisions of AMLATFA 2001 as well as related issues of terrorism financing. In addition, the book also highlights the international treaties and agreements that are related to AML/CFT as well as the legal privileges. However, the current research concentrate on the analysis of the provisions of AMLATFA both in Malaysia and Yemen in terms of

⁴ Norhashimah Mohd Yasin " Legal Aspects of Money Laundering in Malaysia from the Common Law Perspective", see also Norhashimah Mohd Yasin, "An Examination of the Malaysian Anti-Money Laundering Act 2001", [2002] 6 CLJ i.

discovering the strengths and weaknesses of AMLATFA in Yemen and Malaysia respectively.

It is crucial to understand the negative impacts of the activity of money laundering and terrorism financing in a country and to measure how effective are the legislations and enforcement of anti-money laundering and anti-terrorism financing, both in Malaysia and Yemen.

Concepts of AML/CFT have drawn enough journalistic attention labeled more exposés to gather public attention. Many governmental, and non-governmental organizations (watchdogs, transparency advocates and anti-corruption groups) and institutional agencies have developed their own reports, yet still, the number of available literature pertaining to AML/CFT activities in Yemen remains limited⁵.

The realization of the need to have anti-money laundering and anti-terrorism financing legislations was initiated from the international awareness campaign. The first known international awareness started in 1988 with the Statement on Prevention of Criminal use of the Banking System for the Purpose of Money-Laundering which was issued by the Basle Committee on the Banking legislation and Supervisory Practices. This Committee represents from several central banks and other regulatory bodies in a variety of countries which include the majority of European countries, and The United States. Even though this issuance from the set up Committee is not a treaty as such, however, it gives a positive impacts where the majority of the countries is following its Statements for example in Malaysia. For example:

The identity of customers is essential to ensure that financial system is far from being misused. The banks are at full responsibility to know their customers and not only to focus on money making. As such, reasonable efforts should be made to

⁵ Peter Reuter and Edwin Truman Chasing Dirty Money: The Fight against Money Laundering, (Institute of International Economics, 2004), p.2.