

## ANTI-MONEY LAUNDERING CRIMES IN ISLAMIC LAW COMPARED TO THE ALGERIAN AND INDONESIAN LAW

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### *Abstract*

*Islamic law agreed with most modern laws on the seriousness of money laundering crimes, including Algerian and Indonesian laws. Despite the differences in regard to the methods of these crimes because of the different banking systems from one country to another, they exist because of the possibilities available to money launderers on the other. This led to the need to pay special attention by the Algerian and Indonesian laws in order to effectively encounter these modern criminal phenomena. It has resorted to the imposition of strict controls to combat the phenomenon which is mostly derived from the provisions of Islamic Sharia. The procedures and mechanisms that came in the Islamic Sharia and stipulated in the fight against money laundering in Algeria and Indonesian laws, however many obstacles stand in the way without effective control. This crime is covered by the principle of banking secrecy which becomes an obstacle, and often without disclosure of relevant financial transactions money laundering offenses.*

*Hukum Islam searah dengan pandangan sebagian besar hukum modern terkait seriusnya kejahatan pencucian uang, termasuk hukum yang berlaku di Aljazair dan Indonesia. Meskipun terdapat perbedaan dalam hal metodenya karena perbedaan system perbankan, kejahatan ini muncul karena kesempatan yang terbuka bagi pelaku pencucian uang. Hal ini menyebabkan dibutuhkananya perhatian khusus oleh hukum Aljazair dan Indonesia agar dapat secara efektif menghadapi fenomena kejahatan modern ini. Hal ini memaksa penerapan kontrol yang ketat untuk memerangi fenomena ini yang kebanyakan berasal dari ketentuan syariat Islam. Prosedur dan mekanisme dalam Syariah Islam diterapkan untuk memerangi*

*pencucian uang melalui hukum Algeria dan Indonesia, namun banyak kendala yang muncul tanpa adanya kontrol yang efektif. Kejahatan ini tertutupi karena adanya prinsip kerahasiaan perbankan yang menjadi penghambat, dan sering tanpa pengungkapan transaksi keuangan tindak pidana pencucian uang yang relevan.*

*Keywords: money laundering, the banking system, control obstacles, Islamic law*

## Introduction

Growing phenomenon of money laundering is one of the largest real challenges to the financial and banking institutions at all<sup>1</sup>. With the emergence of globalization and technological development in the field of informatics, massive popularization, the use of the Internet network in financial transactions, benefited from the organizers of money laundering offenses in the development of their methods and their illegal operations<sup>2</sup>

Relying on traditional methods, which mainly relied on the smuggling of money and the use of the parallel market and bureau of change, brought about great technological development after the new appear to facilitate money laundering crimes, the most prominent of these methods rely on the use of transfer systems and means of electronic payment cards.

This has led to a deficit control devices to restrict the phenomenon, especially with the limited mechanisms approved by the various banking systems, including the Algerian one, and various bank barriers, particularly with regard to the weakness of the rehabilitation of working the banking sector and the lack of effective banking supervision and non-banking entities in spite of the effectiveness of legislation which it was approved by the legislature in Algeria in the fight against money laundering crimes.

Proceeding from the importance of the above, this study is trying to answer the fundamental problem of the effect: What mechanisms that have adopted Islamic law in order to combat money-laundering, comparing Indonesian and Algerian anti-money laundering law? Which obstacles have limited the effectiveness of the fight against this crime?

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1 Asian Development Bank, *Countering Money Laundering and the Financing of Terrorism*, (Asian Development Bank, March 2013), p. 04.

2 Rick McDonnell, *Money laundering methodologies and international and regional counter-measures*, Paper presented at the conference Gambling, Technology and Society, (Regulatory Challenges for the 21st Century convened by the Australian Institute of Criminology in conjunction with the Australian Institute for Gambling Research and held in Sydney, 7-8 May 1998), p. 08.

## Discussion

### Criminalizing Money-Laundering Activity in Islamic Law Compared to the Algerian and Indonesian Law

Money laundering operations located on the funds earned illegally at the center and theirs in one hand. On the other hand, money is one of the five basic necessities which sought Islamic law to set up and save, and discourage from earning in Sacred texts of the Quran and Sunnah. Indeed, it is important to identify the provisions to money laundering in the Islamic law in two sections: first the Islamic law crime of money laundering point of view, and second, the point of view of Indonesian and Algerian law on the crime of money laundering<sup>3</sup>.

#### 1. Point of view of the Islamic law crime of money laundering

In the Islamic sources, the money laundering provisions that are directly implicated in the crime cannot be found. This is obviously due to the fact that at the time of Mohammad Prophet (PBUH) and infallible Imams (AS), the societies were quite simple and not like today's society as well as the tools of modern crimes and crimes at the time were usually simple<sup>4</sup>. Thus, perhaps for money laundering there is no independent religious sources but it should be noted that Islam is a comprehensive and authoritative sources of jurisprudence in all periods. It is found that these acts are criminalized by the public jurisprudence recourses that some of which are discussed in the following.

Human mount on the love of money to the extent of sedition, is approved by the instinct of Islamic law texts in Quran and Sunnah<sup>5</sup>, and in this Almighty Allah said in the Glorious Qur'an: (Beautified for people is the love of that which they desire – of women and sons, heaped-up sums of gold and silver, fine branded horses, and cattle and tilled land. That is the enjoyment of worldly life, but Allah has with Him the best return)<sup>6</sup>. Almighty Allah said: (*Wealth and children are [but] adornment of the worldly life*)<sup>7</sup>.

It is approved and encouraged for the Islamic Sharia Muslim to collect money to operate the project and inheritance, and to receive donations and zakat and what caused it<sup>8</sup>. It is the lofty principles of Islam organization to gain from

3 Adel Sarikhani, *Money laundering in the Criminal Policy of Islam*, (International Research Journal of Applied and Basic Sciences. Vol., 3), p. 1252.

4 Ibid, p. 1253.

5 Nadim Kyriakos-Saad, Manuel Vasquez, Chady El Khoury, *Islamic Finance and Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)*, (International Monetary Fund, 2016), p. 08.

6 Surah *Al-Imran*, Verse No:14

7 Surah *Al-kahf*, Verse No: 40.

8 Ariff, Mohammad, (ed.), *Monetary & Fiscal Economics of Islam, Jeddah: International Center for Research in Islamic Economics*, (King Abdul-Aziz University. 1982), p. 88.

setting conditions during the acquisition of:

- a. Collect money from Halal, and the combination of haram though infused property phenomenon, but it is forbidden to the owner<sup>9</sup>.
- b. Spend money in Muslim, do not gain absolute monarchy act of man, but there are various restrictions have been put on this act, Almighty Allah said in the Glorious Qur'an: (and eat and drink and be not extravagant; surely He does not love the extravagant)<sup>10</sup>.

Performance of the truth of God between earning and spending, Almighty Allah said in the Glorious Qur'an: *And those within whose wealth are a known right for the needy and the deprived*<sup>11</sup>. Thus, as long as the conditions of ownership available, each individual has the right to earn money as he pleases and that earn a lot of money.

## 2. Point of View of Algerian And Indonesian Law on The Crime of Money Laundering

Algerian law did not know money-laundering activity in the legislative and regulatory texts issued in this area<sup>12</sup>, however, identified the components of the crime of money laundering acts, considered all the proceeds of crime resulting from any crime can serve as a subject of money laundering operations<sup>13</sup>.

Although Algeria's early endorsement of the Vienna Convention, but the Algerian legislature has not taken any step in the implementation of this agreement<sup>14</sup>, particularly as it states committed ratified the need to accelerate the adoption of legislative measures to criminalize money resulting from drug trafficking, laundering operations, until November 10, 2004 the date of issuance law No. 04-15 amending the Penal Code<sup>15</sup>, which is criminalized under which money laundering operations in the articles 389 bis to 389 bis 9.

As a complement to the efforts of the Algerian legislature to confirm the

9 Samah Al Agha, *Money laundering from Islamic Perspective, Institute of Advanced Legal Studies*, (University of London, London, UK), p. 46.

10 Surah Al-Araf, Verse No: 31.

11 Surah AL-MAARIJ, Verse No: 24.

12 Laachab Ali, the legal framework to combat money laundering, (the Office of University Publications: OPU, Ben Aknoun, Algeria), p: 20.

13 Ayad Abdul Aziz, money laundering laws and procedures for preventing and controlling them in Algeria, (Dar Alkhaldoniah, Algeria, 2007), p: 17

14 Algeria ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances under Presidential Decree Number: 95-41, dated January 28, 1995 issued in the official journal, No 07, dated 15 February 1995.

15 Penal Code, issued in accordance with Order No. 66-155 dated 18 Safar 1386, June 8, 1966 and amended by Law No. 04-15 dated 27 Ramadan 1425, November 10, 2004, the official journal, No 71, dated 10 November 2004.

fight against this crime was issued after that Law No. 05-01 on the prevention of money laundering and terrorist financing control<sup>16</sup>, to act as a special provision to criminalize this phenomenon.

Indonesia is combating this crime under the Law of the Republic of Indonesia Number 8 of 2010 on the Prevention and Combating of Money Laundering; Forms of money laundering that the first is active, as defined in article 3 of Law No. 8 Year 2010 on Money Laundering Criminal Action<sup>17</sup>. Actively explained that everyone who puts, transfer, assign, expend, pay, grant, entrusting, brought out of the country, changing the shape, redeem for cash or securities or other actions on Assets known or reasonably suspected to be proceeds of crime<sup>18</sup>.

Besides actively, money laundering can also be done passively, money laundering imposed on any person receiving or controlling the placement, transfer payments, grants, donations, storage, exchange, or using assets that are known or reasonably suspected is the result of a criminal act referred to in article 2 Paragraph (1) of the Law No. 8 Year 2010 on Money Laundering Criminal Action. It is considered equally with money laundering<sup>19</sup>.

In article 4 apply also to those who share in the proceeds of money laundering. In the aforementioned article also explained that money laundering can be imposed on any person who conceals or disguises the origin, source of location, allocation, transfer of rights or ownership is actually on Assets known or reasonably suspected to be proceeds the crime referred article 2 Paragraph (1) of the Act. It is also considered the same as money laundering.

### Islam and Illegal Money

Earning money through crime, not one doubts that is not a legal way that God has set for the making money, which, the money that is collected through drug trafficking or trafficking in white slavery or trafficking in human organs, or other ways in which God does not set to be legal money, is not permissible, and

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16 Law No. 05-01 on the prevention of money laundering and terrorist financing control, dated February 6, 2005, the official journal, No 11, issued on 04 April 2005. The modified and complemented.

17 Law of the Republic of Indonesia number 8 year 2010 regarding countermeasure and eradication of Money laundering, the supplement of the state gazette of the republic of Indonesia number 5164.

18 Nikmah Rosidah, *The comparison of the Indonesian PPATK role with other countries financial intelligence unit (FIU)*, (The First International Conference of Law, Business and Government 2013, UBL, Indonesia), p. II 89.

19 Also it has been mentioned in regulation of Indonesian bank number: 14/27/PBI/2012 concerning implementation of anti money laundering and combating the financing of terrorism program for commercial bank.

so Islam forbade collecting money from haram, which was outlined in the texts of the Koran that were using people's wealth unlawfully, and was detected were not present in the prophecy time or were present but rare and abounded in our time)<sup>20</sup>, Almighty Allah said in the Glorious Qur'an:

*And do not swallow up your property among yourselves by false means, neither seek to gain access thereby to the judges, so that you may swallow up a part of the property of men wrongfully while you know<sup>21</sup>.*

The significance of the prohibition of earning no vanities money, and the statement that some people pay officials a bribe to facilitate for this, are not limited matter of the cross on their rulers. However, it falls in the description of every official in his position in order to facilitate ways for these.

On the other hand, Islam opens multiple doors for valid traded and earnings for Muslim. Islam also warned on exploiting religion as a way to raise money and treasure, or claim, even if it is owned by the men of forensic science themselves, as Almighty Allah said in the Glorious Qur'an:

*O ye who believe! Devour not your substance among yourselves unlawfully, but let it be a trading among you by mutual agreement. And slay not yourselves, verily Allah is unto you ever Merciful. And whoever commits that through aggression and injustice, we shall cast him into the Fire, and that is easy for Allah.<sup>22</sup> And said: O ye who believe! Lo! Many of the (Jewish) rabbis and the (Christian) monks devour the wealth of mankind wantonly and debar (men) from the way of Allah. They who hoard up gold and silver and spend it not in the way of Allah, unto them give tidings (O Muhammad) of a painful doom, On a Day whereon they Shall be heated in Hell-Fire, and therewith shall be branded their foreheads and their sides and their backs: this is that which ye treasured up for yourselves, so taste now that which ye have been treasuring up<sup>23</sup>.*

Therefore, the position of explicit Islam rejects every act outwardly good result to stealing money and it is enough that Islam has vowed to both collect money from haram and all of illegal money that is doomed to hell, hypothalamus. In addition, it has shown so many opinions and views that support the diligence prohibiting operations money laundering<sup>24</sup>.

20 Ziauddin Ahmad, Munawar Iqbal and Fahim Khan, *Money and Banking in Islam, Institute of Policy Studies, Islamabad and International Centre for Research in Islamic Economics*, (J. Res. Islamic Econ., Vol. 3, No. 1), pp. 93-99.

21 Surah al-Baqarah, Verse No: 188.

22 Surah A- Nisa, Verse No: 29.

23 Surah at-Taubah, Verse No: 34.

24 Md. Abdul Jalil, *Financial Transactions in Islamic Banking are Viable Alternatives to the Conventional Banking Transactions*, (International Journal of Business and Social Science Vol. 1 No. 3; December 2010),

It stands on the sources of earning that many of the sources in Islam stipulates prohibition explicitly. Not only limited to that, but also the general rule of Islamic law that originally permitted the things that make money from legitimate ways permissible whatever the variety of ways this gain. It includes the whole activity economic-based exchange of goods and products, buying and selling the company and other actions, contracts and industry. It also discussed the preparation and making human needs in all areas of his life, how all money become halal, the transfer and the advantage of them, and the activities that lead to loss of land. Islam also has forbidden for alcohol and drugs and its magnitude, and oppression, usury, embezzlement, bribery and monopoly.

### Islamic Analysis to Money Laundering Crime

Islamic law was a tightly balanced system; there is no place to tamper or for injustice. If the positive law is finally over as criminalization to the phenomenon of money laundering as an independent, as it in the case of Algerian law 05-01 on the prevention of money laundering and terrorist financing and control<sup>25</sup>. Islamic law has deprived money laundering in the first sight as merely as a kind of malicious forbidden gains, and even blocked all access to the headwaters to steal money. In addition, it states the prohibition of all roads leading to it, such as the prohibition of drugs, theft, and prostitution, etc.<sup>26</sup>, and also criminalized various forms of dealing with haram wealth.

Considering article 02 of Law 05-01, we find that the number of types to phenomenon of money laundering and its crime, and within these types possession of illicit funds. Dropping the legal characterization in terms of legitimacy reflected to us that the possession of money, which is an important rib from the sides of money laundering crime is thus had established also Islamic law<sup>27</sup>.

Islam forbids a Muslim possession of forbidden money whatsoever, described the criminalization adhesive forbidden funds, including money laundering in two ways; on the one hand winnable being brought Muharram way is not approved by Islam such as trade in drugs, terrorism or corruption, hand spent the fact launderer intentionally covered some projects that look legitimate in value.

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p. 219.

25 Law No. 05-01 about *anti-money laundering and terrorist*, dated February 6, 2005, the official journal, No. 11, issued on 04 April 2005.

26 United States Department of State Bureau for International Narcotics and Law Enforcement Affairs, (Money Laundering and Financial Crimes Country Database, June 2015), p. 23.

27 Syarif bin Adwal bin Idris, *Khitman Al-Sir WA Ifshauhu fi Fiqh Islami*, (Jordan: Darul Nafais, 1997), p.15-16.

Thus the crime of money laundering has committed a sin of two sides of this offense to Islam Forbidden money whatever it was, whether any of the original holder or transferred.

### Penalty to Money Laundering Crime an The Islamic Law Compared to The Algerian and Indonesian Law

Crimes in Islamic law divided into two parts:

- a. Border crimes and retribution: They are the same punishment the offenses specified in advance the protection of the group. Therefore, it is not right to forgive shooting down, and its border crimes punishable as a crime. It also includes seven crimes, namely: adultery, defamation, drinking, theft, banditry, apostasy, and the prostitute are punishable, and include murder, killing almost willful manslaughter, the felony to intentionally less than the soul, for what crime without self-fault<sup>28</sup>.
- b. Acts that would not oblige limit and retribution, and include all of the sanctity of Islamic law, without specifying its sentence, leave the governors of this selection command in the light of the origins of Islamic law and general principles. It is known as discretionary crimes, or punitive sanctions, which the Islamic Sharia only reports as a range of sanctions. The strongest sanctions depends on the judge to choose the appropriate punishment for each offense, commensurate with the circumstances of the offender and the offense<sup>29</sup>.

Islamic law applied that no crime and no punishment except by law strictly applied in the border crimes and retribution and blood money by defining crimes and punishments prescribed. Therefore, precisely it is unlike discretionary where the law did not comply to the same narrow border crimes<sup>30</sup>, but has expanded it to apply to a certain extent due to the requirements and the nature of discretionary. This triggers discretionary either providing for their prohibition in the Quran and Sunnah or authorizing the guardian to judge the question of signing the right punishment for it, or stipulated sanctions and in special laws, a so-called discretionary organized crime.

28 Mohammed Elewa badar, *Islamic Law (Shari'a) and the Jurisdiction of the International Criminal Court*, (Leiden Journal of International Law, 24, 2011), pp. 411–433.

29 M. Zahra, *Characteristic Features of Islamic Law: Perceptions and Misconceptions*, (Arab Law Quarterly, 2000), p. 168.

30 Rudolph Peters, *Crime and punishment in Islamic law; Theory and Practice from the Sixteenth to the Twenty-first Century*, (Cambridge University Press 2005), p. 69.

Algerian law differentiates between the crime of money laundering in the image simple and tight, but in both cases considered a misdemeanor punishable by imprisonment of five (05) to ten (10) years. As the only full crime and initiating the article 389 bis 3, In the case of coupling aggravated crime raises the negative punishment for freedom of imprisonment of ten (10) to fifteen (15) years and in accordance with article 02 bis 389 of the Penal Code<sup>31</sup>.

Algerian law to impose a fine as well as assessments for the perpetrators of money laundering crimes 1.000.000 to 3.000.000 DA, and in the case of aggravated combined value of the fine of 4,000,000 to 8,000,000 DA. On the other hand<sup>32</sup>, it flattened article 389 bis 03 in between the full punishment of crime and just started.

In addition to the imposition of Algerian law supplementary penalties, where the provision of article 04 in the third paragraph of the Penal Code: «supplementary punishment are those that may not be sentenced them independent of the original penalty, except for cases prescribed by law explicitly, which is either mandatory or optional». It means that the Algerian legislature to impose mandatory subordination of sanctions is in accordance with article 09 of the Penal Code in: legal custody and deprivation of the exercise of national, civil and family rights, house arrest, prohibition of residence, confiscated partial funds, prevention interim to pursue a career or activity, the closure of the institution, exclusion from public contracts, the ban on issuing checks and/or the use of payment cards, suspend or revoke a driver's license or canceled with the prohibition of issuance of a new license, the withdrawal of the passport, the publication or suspension of the conviction.

In Indonesia, it is legally regulated in the Law of the Republic of Indonesia Number 8 of 2010 on the Prevention and Combating of Money Laundering, in which money laundering is distinguished in three criminal offenses<sup>33</sup>:

- a. First, money laundering active, ie every person who puts, transfer, assign, spend, grant, entrusting, brought out of the country, changing the shape, exchanging money money or securities or other actions on Assets known or reasonably suspected is the result of a criminal act referred to in article 2 paragraph (1) for the purpose of concealing or disguising the origin of the assets. (article 3 of Law No. 8 of 2010).

31 Article 389 bis of Penal Code, issued in accordance with Order No. 66-155 dated 18 Safar 1386, June 8, 1966 and amended by Law No. 04-15 dated 27 Ramadan 1425, November 10, 2004, the official journal, No 71, dated 10 November 2004.

32 Article 389 bis 01 of the Penal Code.

33 Yunes Husein, *combating money laundering and terrorism financing Indonesia perspective*, (Presented at Program Second Conference on Secure Trade in the APEC Region, Chile 05-06 March 2004), p. 02.

- b. Second, money laundering passive charged to each person receiving or controlling the placement, transfer payments, grants, donations, storage, exchange, or using assets that are known or reasonably suspected to be proceeds of the crime referred to in article 2 paragraph (1). It is considered equally with money laundering. However, excluded from the Reporting Parties implement the reporting requirements as stipulated in this law. (article 5 of Law No. 8 of 2010).
- c. Third, in article 4 of Law No. 8/2010, were charged anyway for those who enjoy the process of money laundering imposed on any person who conceals or disguises the origin, source of location, allocation, transfer of rights or ownership is actually on Assets known or reasonably suspected is proceeds of crime as referred to in article 2 paragraph (1). It is also considered the same as money laundering. Penalties for perpetrators of money laundering is quite heavy, which starts from a maximum prison sentence of 20 years maximum, with a maximum fine of 10 billion rupiah.

After reviewing the position of Islamic law of money laundering and establish it legitimate crime «Tazirah», it turns out they had to punitive penalties are prescribed guardian, thus through the laws and the regulations issued in various Islamic countries that have criminalized money-laundering activity and the development of specific sanctions it has become a money laundering crimes, a punitive organization.

### Conclusion

In this article we dealt with a modern phenomenon of the most complex criminal phenomena that haunt the mind of many countries such as Algeria and Indonesia, where we started to talk about the general framework of money laundering under Islamic law. In addition, it argued cunning methods pleading the emperors of crime and persons with malicious gains to escape legal accountability or legitimacy which it constitutes serious and damaging effects on different levels. Then we need to view all attempts to describe this phenomenon that it constitutes a separate offense in itself and within the clique of forbidden money that Sharia inhibiting and warning them.

Despite this adjustment, however, this phenomenon is different with its intricate twists our leaders to talk about relations interlocking phenomena and various activities, including illegal project. It shows the extent of disharmony between them and the project activity such as repentance, which represents a way out of Islamist to clean the funds to be pure, unlike the dirty phenomenon. On the other hand, it shows us the extent of harmony between them and the

illicit activities as the case of terrorism and corruption. And it summoned us to the remembrance of legal control and legitimacy to curb this phenomenon and urgently stop the advanced case towards various communities and brutally dangerous unrivaled.

Islamic Sharia has prohibited the phenomenon of money laundering and blocked all the headwaters get to steal money and that the prohibition of all roads leading to it, such as the criminalization of drugs, theft, and prostitution, etc. It also criminalized those which are dealing with haram wealth, taking and giving, believing what the money launderers acts of religiously unacceptable, as well as in most of the laws, such as those in Algerian and Indonesian law, where criminalized money laundering imposed to harsh penalties.

Therefore we see the need to expand the criminalization steal money in various forms and manifestations and wasted all actions that fall upon. It is imperative that we really want to fight against money laundering to outlaw other forms of crimes that permitted by man-made laws, such as alcohol, gambling, prostitution and so on and emphasis regarding the fight. It is not justice of leniency with them while they pose a serious pest of any society.

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