

Money Laundering in Iranian Domestic law and International Law

Mohammad Rasoul Ahangaran*

Full Professor, Department of Law, Tehran
University, Iran
ahangaran@ut.ac.ir

Meysam Safareh

Research Scholar, Educated in Master of
Law, Tehran, Iran
meysamsafareh@gmail.com

Abstract

Money laundering is a criminal act with devastating effects on the domestic economy of states and their international image. Money laundering is a secondary crime committed as a result of a primary criminal act, intended to conceal or purge and neutralize a financial transaction, and also means knowingly concealing the illicit source of property resulting from the commission of such crimes in such a way that the property seems legal and legitimate. The criminalizing of such an act was raised following the spread of organized crime in the world, and the goal was to reduce the motivation of criminals to commit crimes by cutting off the hands of criminals from their criminal proceeds, and thus to fight money laundering. In addition, features including the high rate of money laundering in the world, the organized, transnational, and without being specifically criminalized nature, economic, social, and political adverse effects as well as close connection with other crimes necessitate criminalization of money laundering in the world and also in Iran. Thus, an act on combating money laundering has been passed

in Iran, which has not yet passed the final stages of legislation. There are numerous international and regional instruments on money laundering, including Vienna Convention 1988, Council of Europe Convention 1990, European Directive 1991, FATF Forty Recommendations 1990 and its amendments in 1996 and 2000, Palermo Convention in 2000, and the Anti-Corruption Convention 2003. The solutions provided by these documents are necessarily judicial or legislative. The purpose of these strategies is to narrow the field for money launderers as much as possible and increase the cost of money laundering operations for them so that committing a crime is useless for them and as a result prevents them from committing a crime.

Keywords: Money Laundering, Corruption, Organized Crime, Money Launderers, Conflict

1. Introduction

The increase in crime rate as well the increased liquidity has led to a significant money laundering increase so that from the '90s onwards, the international community became aware of the large volume and rapid growth of the money laundering issue and its role in crimes committing. This spread has been the result of three distinct global trends:

The first trend is the rapid growth of financial markets. The second trend is the technological and scientific revolution of the last two decades, and the third trend is the globalization and integration of national economies and financial markets. Globalization and

liberalization of financial markets pave the way for money transfer across national borders due to the connection and integration of markets. Along with these developments, factors including the absence of accurate and transparent information about the activities of money launderers and the methods of infiltration of elements involved in money laundering in the economic layers of governments and most importantly in the banking system are very effective in spreading money laundering. The current paper investigates the crime of money laundering in Iranian law and subject matter laws to the extent of this crime in international law. The purpose is to analyze the attitude of domestic and international law towards money laundering and its effects according to domestic and international law. (ACT, 2017)

2. Money laundering nature

Money laundering is any type of operation that is carried out after obtaining income and material benefits from committing other crimes such as gambling, prostitution, corruption, financial abuse, and bribery, to prevent the detection of crime and to legitimize its income and it is hidden from government control. In countries where this is criminalized under a codified law, these measures are usually taken with the intention of tax evasion.

2.1 Money laundering methods

- **Embezzlement:** Embezzlement does not mean the term in the current law of Iran, but in its general definition in the financial markets is the appropriation of capital by one person and its deliberate presentation to a specific purpose.

- **Exchange:** One of the least expensive and most common methods of money laundering is the conversion of cash on hand into other conventional currencies. Such are domestic currency exchanges or digital exchanges (digital currencies).

- **Unrealistic contracts (transfer):** This method requires ensuring the certain sale of the product that has been concluded by financing the property resulting from the crime.

3. Money laundering Elements

Money laundering can be classified into 3 materials, legal and spiritual elements according to the conventional legal classification in Iran. Its material elements include financial processing, opening a fraudulent account, concluding an unrealistic contract, and so on.

The controversial issue in money laundering is its spiritual element. Needless to say, money laundering is a deliberate act to achieve the goals of this crime. But the question comes to mind when we ask whether the victims of the fraudulent act of concealing money are merely victims or accomplices of the crime?

In the law amending the money laundering law approved in 2018, the Iranian legal system states that money laundering is:

A- Acquisition, possession, maintenance, or use of proceeds of crime with knowledge of its criminal origin. (B) The conversion, exchange, or transfer of proceeds to conceal its criminal origin, knowing that it was obtained directly or indirectly from the commission of the crime or assisting the perpetrator of the crime in such a way that he is subject to the legal effects and consequences of the crime.

The legal system governing money laundering is different from the law in Iran, the Vienna Convention being the first internationally binding document to emphasize the need to criminalize money laundering in the national laws of the Contracting States. Article 3 of the Vienna Convention, signed in 1988, and Article 1 of the Palermo Convention 2000, as well as some other international instruments, requires state parties to take the necessary steps to criminalize money laundering following their domestic law. Therefore, the

legal element of money laundering should be considered in the domestic law of each country. (States, 23 May 1969)

However, the crime of money laundering in international instruments, especially in the Palermo Convention, is an organized crime committed by criminal groups for financial or material gain. (States, Palermo Convention, 12 December 2000)

However, it cannot be considered as a crime against property and ownership, because it is considered a crime against property that causes damage to the victim, while in money laundering, the perpetrator acts on money. (States, 23 May 1969)

Whether it belongs to him or the owner has asked the perpetrator to perform the act on the property, although the source of the acquisition of the property is illegitimate and although the primary crime is the victim, the money laundering operation itself is not the act and on the direct victim. On the other hand, due to the deception of the judiciary and the concealment of criminal evidence, and the diversion of criminal investigations, this crime can be considered as a crime against criminal justice. Thus, money laundering is also considered a financial crime against public security and comfort.

On the other hand, given the manner and action of the perpetrator of this crime, it can be pointed out that the instances of this crime are:

1. Conversion or transfer of assets resulting from a crime
2. Concealment of the true nature of the origin, location, transfer, or ownership of property and rights related to property resulting from the crime,
3. Acquisition, possession, and use of property resulting from a crime,
4. Assisting the offender in not including criminal penalties, all of which are done to conceal the criminal nature of the property in question.

4. Money laundering features

One of the hallmarks of the current crime of money laundering is its transnational nature; that the features have appeared due to the transfer of information, objects (such as weapons or drugs) persons (whether criminals or victims of crime) money, or other property from the borders of countries.

There are many examples of money laundering discovered that show the transnational nature of money laundering, including the case of the International Bank for Reconstruction and Development. Another example is the arrest of the main gang of arms smugglers and money launderers under Operation Green Ice in 1992, which led to the arrest of more than 200 tons of narcotics in six countries, most of them affiliated with the Colombian criminal family's organizations. During the trial, 3.5 million was seized in London, and at the same time, two foreign nationals were arrested in the country for about \$40 million, and 42 kilograms of cocaine were seized from them. Another feature is the organization of this crime; since the source of income that needs to be laundered and usually with the cooperation and participation of such groups to exploit that income, so it is organized.

Another issue is that there is no specific victim of this crime; in the case of money laundering, however, the crimes that preceded it, such as armed robbery, kidnapping, were violent and unsolicited, or the perpetrators, often organized crime groups whose violence is their ideology, may commit violent crimes. But there is no need for violence to commit money laundering, and the participants in money laundering operations willingly and without resorting to violence and dissatisfaction and without harming the interests of a particular person, and on the contrary, purge their interests with a kind of trickery. The same trick may be considered the material element of a crime called fraud against the general target community, which disrupts the economic order

of the community. Therefore, it can be said that money laundering may not have a specific victim, but the general aspect of this crime is the material and spiritual loss of society through the disruption of its economic system. This feature has made this crime unknown and unrelated to potential perpetrators and its harmful effects and has made the public and even the legislature less sensitive to it because none of the unpleasant situations such as feeling insecure or fear of other crimes. There is no such thing as money laundering or murder, and for this reason, most countries' domestic money laundering laws were passed after warnings and even international pressure. This has made the fight against money laundering more difficult.

5. Electronic money laundering

As mentioned, "Transfer" is one of the most common tools of money laundering in all parts of the world, and now the possibility of electronic transactions has facilitated this process. These tools include the following:

Electronic transfers of funds from a secure financial location to a risky geographical location or vice versa without any economic or professional reason or it is done without compliance with the professional activities and work records of the client.

Electronic receipts of significant amounts to an external customer's account for no apparent reason, transfer of funds without explanation, frequently or with unusual patterns, and finally, electronic receipts and payments to/from the customer's account without obvious connection to legal goods and services sales contracts.

With the development of e-commerce, criminals are discovering new ways to launder money. One of these new methods is Transaction Laundering. Transaction laundering is Electronic Money Laundering, and for this, we can say that it is the digital evolution of money laundering. Transaction

laundering provides these illegal merchandise sellers with a secret to hide their transactions by entering sales receipts into the payment system and washing the dirty money. Transaction Laundering occurs when an approved vendor uses payment credentials to process payments for another undisclosed store selling unknown products and services. Although unknown, Merchant Service Providers (MSPs) can facilitate money laundering, so regulators punish them for not complying with AML obligations. The fact that unfortunately, MSPs may suffer severe reputational damage. The development of e-commerce and mobile payments has enabled money laundering to reach an unprecedented level. For Online product and service sales, Transaction Laundering is estimated to exceed \$ 159 billion in the US alone in 2016. Also, according to some experts, this figure will increase even more in 2020. This began to worry around the world, and governments are trying to combat money laundering. Regulators are very interested in this issue and are introducing new laws to prevent or reduce electronic money laundering. This issue, which has been on the government's agenda for many years, has become more and more important with the progress of e-commerce. Transaction Laundering takes advantage of legitimate payment ecosystems by setting unknown e-commerce transactions through legal vendor accounts. It acts as a payment process for illegal businesses selling illegal websites, illegal drugs, and other illegal products such as this.

6. Iran law attitude toward the crime of money laundering

Article 2 of the Law on Intensifying the Punishment of Perpetrators of Bribery, Embezzlement and Fraud approved by the Islamic Consultative Assembly on September 19, 1985, and November 6, 1985, by the Expediency Discernment Council also ruled as

follows: "Anyone who, in any way ... or in general, obtains money, which has had no legal legitimacy, is considered a criminal and rejects the principle of property and punishment.", "Imprisonment or a fine will be imposed twice as much as the property obtained." (Authorities, approved 1985)

Article 28 of the Law on Amending the Law on Combating Narcotics and Appendixes approved by the Expediency Discernment Council on November 8, 2007, with its subsequent amendments, reads as follows: "This law is confiscated in favor of the government if there is sufficient evidence for confiscation and is not subject to Article 52 of the Constitution regarding government property."

Despite these regulations, the Iranian legal system with the adoption of the Anti-Money Laundering Law in 2007 is a relatively useful step forward compared to the previous situation. Of course, in addition to the Anti-Money Laundering Law that was passed in 2007, other scattered laws were used in connection with the crime of money laundering, especially before the law was passed.

These laws are conceptually reflected in the form of money laundering, and guarantee various executions such as imprisonment, fines, and main confiscation of property. (Ansel, 1996)

An example of this is the constitution is Article 49 of the constitution that reads: "The government has the responsibility of confiscating all wealth accumulated through usury, usurpation, bribery, embezzlement, theft, gambling, misuse of endowments, misuse of government contracts and transactions, the sale of uncultivated lands and other resources subject to public ownership, the operation of centers of corruption, and other illicit means and sources, and restoring it to its legitimate owner; and if no such owner can be identified, it must be

entrusted to the public treasury. (Baqerzadeh, 1996) .This rule must be executed by the government with due care, after investigation and furnishing necessary evidence by the law of Islam. "

After this date, other legal provisions were approved by the Islamic Consultative Assembly to implement the mentioned principle.

7. International law attitude toward money laundering

The United Nations Convention to Combat Trafficking in Narcotic Drugs and Psychotropic Act of December 20, 1988, Vienna is among the first seriously taken solutions to combat money laundering in international documents and conventions in recent decades. The international community entered the issue of money laundering for the first time by providing a legal definition by this convention. The Vienna Convention, to which the Islamic Republic of Iran acceded in 1991, emphasizes the need for appropriate penalties for money laundering. Although the treaty was delayed for two years to enter into force, its positive effects on subsequent international and domestic legislation can be seen, and this is a sign of the success of the Vienna Convention.

The Convention allows states to do so if, following the principles of the Constitution and the basic concepts of national legal systems, it is possible to punish perpetrators of another source of punishment, the use of proceeds from the crime of drug trafficking.

Another case is the report of the Financial Action Task Force on Combating Money Laundering (known as the Forty Recommendations) adopted in 1990 and amended in 1996; The Financial Action Task Force (FATF) is an international body established to develop anti-money laundering policies at the national and international levels. The group is merely a decision-making body

formed with the political will of Western countries to formulate laws and a national understanding to combat money laundering. This institution does not have a written and defined law and even its longevity. Countries should criminalize money laundering based on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

The Financial Action Task Force on Combating Money Laundering (FATF), affiliated with the Organization for Economic Co-operation and Development (OECD), lists four key threats to the global money-laundering problem.

1- Failure to fight money laundering makes it easier for criminals to profit from criminal or illegal activities.

2- The possibility of using the official financial network by money launderers brings with it the risk of corruption of financial institutions and the entire financial sector of the national economy.

3- The accumulation of power and wealth by criminals and criminal groups - with the possibility of money laundering - is a serious threat to national economies and especially to democratic systems.

The Financial Action Task Force (FATF) was formed in 1989 by the G7 countries and is an international organization that aims to develop and advance an international response to money laundering. In October 2001, the Financial Action Task Force expanded its mission to include the fight against terrorism. The Financial Action Task Force is a group of policymakers that brings together legal, financial, and law enforcement experts to make the necessary amendments to the laws and regulations of countries, which have three main tasks:

1- Monitor the progress of members in implementing anti-money laundering measures

2- Review and report trends, techniques, and countermeasures

3- Develop, adopt and implement anti-money laundering standards worldwide.

Another international measure is the financing of terrorism based on Security Council Resolution 1373; The adoption of Security Council Resolution 1373 on September 28, 2001, was a sign of the international community's determination to fight terrorism.

Another item is the statute of the Basel Committee; In December 1899, in the Swiss city of Basel, the banking authorities of 12 countries issued a charter to which the banks of the member states had to comply. These principles include identifying customers, avoiding suspicious transactions, and working with law enforcement agencies to combat money laundering.

The committee's guidelines on banking supervision in preventing the use of the banking system for criminal purposes are as follows:

1. Complete customer identification,
2. Refrain suspicious transactions,
3. Cooperate with law enforcement organizations,
4. Train staff and create methods to track suspicious transactions,
5. Banking supervision to the logical standards of customer identification and so on.

8. Challenges of the Iranian legal system in combating money laundering

Iran's legal system has many problems in combating money laundering; the capabilities of our judiciary and criminal justice system on financial information is limited and there is no specific legal procedure or rule that can guide the judiciary in economic or organized crime, identify perpetrators, identify and track criminal property and proceeds, and voluntary cooperation in the private sector of the economy with the judiciary in the presentation of documents and financial information, it can

also be said that the seizure of property for confiscation orders and there is no fine in the form of a system. (GH., 2017) However, to identify and track perpetrators and criminal property and proceeds requires the cooperation of the private sector of the economy with the judiciary in providing financial documents and information that is only voluntary in Iran.

On the other hand, ambiguity in the functioning of the executive agents is another reason for the emergence and occurrence of crimes; so it should be clear to the people what exactly does each government ministry or organization do, even non-governmental legal entities, what are their duties, how much is their budget and possibly income? Where and how do they spend that budget and that revenue? People should know how much each responsible official is paid, what are his duties? And what are the conditions for assigning that responsibility?

These issues themselves reduce the grounds for committing crimes, including money laundering, in any case, the lack of comprehensiveness and obstacles to the anti-money laundering law, the transfer of oversight of anti-money laundering to a non-judicial institution, lack of effective solutions for organized crime, ensuring adequate enforcement guarantees for the correct and effective implementation of the law and the incompatibility of the crime of money laundering with the punishment provided by law are among the gaps and challenges of the anti-money laundering law. (Sadeghi, 2003)

It is unfortunate that in our country, firstly due to the opaque economic structure and secondly due to the economic sanctions imposed by the West, it has practically left some people free to transfer currency and circumvent the sanctions to carry out money laundering operations with more freedom of action and easily hide from the law and the courts, and the growing trend of money laundering in Iran and the inefficiency of the legal fight against it,

requires the need for basic research on why are criminals of money laundering and other economic crimes so easily escaping the clutches of legal material, and the government has failed to do so despite the passage of strict laws. However, in the field of banking, many public and private banks have issued instructions to guide units in the fight against money laundering and send the latest changes in the information of the recipients of basic services to the Financial Information Center monthly, sending reports of the names of suspects receiving basic services from the bank's branches to the Financial Information Center and the Central Bank and has been successful in sending suspicious cases to the FIU Financial Information Center.

From a legal point of view, although in the laws before the Anti-Narcotics Law approved by the Expediency Discernment Council in 1942, reading between lines of many articles and laws, there are areas of anti-money laundering in various forms, but attention to this crime is taken seriously, and it has been somewhat transparent since the Vienna Convention on Narcotic Drugs and Psychotropic Drugs. With the passage of law entitled the Accession of the Government of the Islamic Republic of Iran (Bank, 2018) to the United Nations Convention against Narcotic Drugs and Psychotropic Drugs, adopted in Vienna, a law containing the provisions of the Convention on Money Laundering had to be prepared, but unfortunately when The Anti-Narcotics Law was passed in line with these goals, referring to it as a subsidiary and in the form of concepts that can be called money laundering. However, the philosophy of not anticipating the title of money laundering is explicitly and sequentially covered by a specific criminal effect.

9. Conclusion

The struggle to eradicate money laundering is gaining momentum with the cooperation of other countries of the world; in addition to the proceeds of drug trafficking, these campaigns include proceeds from other crimes such as extortion, bribery, fraud, and corruption, etc. and any profit gainer crime. In the meantime, several international efforts have been made to combat money laundering, and as a result, numerous treaties and laws have been adopted. In addition to the items specified in this article, we can refer to the treaties of the European Union, the actions of the World Bank and the International Monetary Fund, and so on.

Unfortunately, in our country, due to the unknown effects and consequences of money laundering in the economy, no significant action has been taken to combat money laundering, and the reasons for this, in addition to ignorance of its nature, the prevailing thinking is to consider money laundering as a continuation of the crime of origin and considers the actions after the crime of origin as its continuation thus it is known as a crime without a victim, while the global experts approach to "money laundering" differs largely by that of in our country. Today, in most developed countries and even in the countries of the Persian Gulf region, the financial pursuit of funds obtained from drug trafficking and other serious crimes precedes physical control.

On the other hand, the awareness of developed countries about the effects of money laundering and the development of necessary laws and regulations in this regard has led to the proceeds of crime in countries that do not have the mechanisms of the monitoring system and anti-money laundering law. This creates many problems for them. Therefore, the first step to deal with this problem is to have appropriate laws and regulations, and having such laws as a precondition, in addition to a careful look at the various areas of the

underground economy, a careful and impartial look at international documents and treaties and the Principles of Forty Is the FATF. Because these proposals have been recognized by several international institutions, and because they have the necessary flexibility and have refused to go into details, it is possible to accept the above recommendations, which are not complicated and difficult; provided that there is some kind of political will to realize it in the country. There is no doubt that there is currently no independent crime in Iranian criminal law called money laundering. However, the Islamic Consultative Assembly in 2012, under the Law on Iran's Accession to the United Nations Convention against Narcotic Drugs and Psychotropic Drugs, allowed the government to accede to the United Nations Convention against Narcotics. Accordingly, psychotropic drugs approved by the Conference on December 20, 1988, at the Sixth General Session, following paragraph A of Article 28 of the Convention, provided that the Convention is not required by the Islamic Republic of Iran in cases contrary to domestic law and Islamic standards to exchange its documents.

Therefore, it is considered that the explicit legal text that criminalizes money laundering and in addition to the sentence of confiscation of property, also determines the punishment does not currently exist in Iranian domestic law. There is no judicial procedure, as well. Of course, when the cabinet submitted it to the Islamic Consultative Assembly for approval in 2007, this "anti-money laundering crime bill" has been considered, and although this bill is in the final stages of becoming law, it is still in its infancy. (IRAN, NA) It is still not published in the Formal paper as the official "law" as there is a conflict between national and transnational laws in terms of criminality and definitions and how to deal with it that requires more attention and better alignment between national and transnational laws.

According to the money laundering laws, the latest of which is the amendment law approved in 2018, there is more disagreement over the definitions and implementation of the laws, which requires more interaction. To optimize the regulations of Iran, amend the regulations of large sales, reform the tax systems to create economic transparency, as well as monitor the prevention of collusion of auditing firms and statutory auditors who audit companies is necessary. Meanwhile, the Ministry of Economy and Finance has a heavy responsibility in this regard. On the other hand, most money laundering occurs for the same reason and more or less in some public and private banks, but in the same banking system, one office has been set up by the Ministry of Economy to fight money laundering, although so far no good action has been taken in the fight against money laundering, and if it does happen, people are unaware of it. More importantly, although Iran acceded to this convention in 1946, no action has been taken to criminalize criminal offenses in domestic law to criminalize the cases explicitly specified in this article. In other words, at present, none of the acts referred to in the Convention as money laundering is a crime and punishable if committed in Iran, despite its accession to the Convention; as a result, filling this legal gap as soon as possible by the relevant authorities is an undeniable necessity to result in a legal and decisive fight against the perpetrators and to eradicate the effects of money laundering in the country.

References

1. Author, C. (2018). Law on Amending the Anti-Money Laundering Law. 7-9.
2. States, S. (23 May 1969). Vienna Convention on the Law of Treaties. Article 3.
3. States, S. (23 May 1969). Vienna Convention on the Law of Treaties. Article 3.
4. States, S. (12 December 2000). Palermo Convention. 25-50.
5. Authorities, N. (approved 1985). Intensifying Punishment for Perpetrators of Bribery, Embezzlement and Fraud,
6. Ansel, M. (1996). Social Defense translated by Mohammad Ashouri and Ali Hossein Najafi.
7. Baqerzadeh, A. (1996). Economic Crimes and Money Laundering. 45-46.
8. Haji Dehabadi - (2006). Complete set of laws of the Islamic Penal Code. Tehran - Mizan Publishing.
9. GH., K. (2017). An introduction to money laundering, Islamic Law and Jurisprudence Studies. 105-130.
10. Ghasemi, M. (2015). Iranian lawmaker criminal policy discourse in the Law on Combating Money Laundering. Tehran, Mizan.
11. Sadeghi, M. M. (2003). Crimes against property and ownership. Tehran: Iran
12. Bank, C. (2018). Anti-Money Laundering Law. Tehran: Iran.
13. IRAN, I. P. Detailed Parliamentary Debates in Money-laundering. Tehran: Islamic Parliament Research Center Of The Islamic Republic Of IRAN.