Money laundering in the Criminal Policy of Islam

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Abstract

From the beginning of human life, to obtain main needs of their everyday lives, they needed a tool to easily achieve their economical demands. So the money was created, but unfortunately, these tools as some other tools were abused by people too. The Money laundering is defined as the obtaining incomes from illegitimate and illegal ways and use of different methods for its purification, in order to conceal its source and origin. It is notable that the governments of the world for fighting and prevention of this crime, always have offered various solutions. And on the other hand, although exact definition in Jurisprudence for the term is not provided but considering the valid Jurisprudence rulings related documents it can be deduced that the committer of this crime in accordance to the Islamic Jurisprudence rulings is punishable.

Keywords: Money laundering, Jurisprudential rulings, Criminal negligence

Introduction

Money laundering is the consequences of globalization, which along with improvements in science and technology, has been putting the international community in terms of economic, social and political in ups and downs.

In the cycle of money laundering and drug trafficking mafia gangs and gun traffickers and... try to hide the criminal origin of financial gain. By using various methods they attempt to cleanse it and to remove criminal proceeds as well as to keep its source in secret. And by discovering and identifying the source of incomes and destroying it or attempting to legitimize the earned money they try to easily use the money and achieve their goals.

It should be noted that providing a precise definition of money laundering that may include every aspects of it, which is inclusive is a difficult issue, and the difficulty in crimes with multiple aspects are much more obvious. It is due to the multi disciplinary aspects of the criminology and its outcomes. However the legal experts and other relevant organizations have been tried to provide some definitions of money laundering. These definitions are mostly based on (Nisa verse 29) and (Maedeh verse 33) and some other sources.

However to give a definition for money laundering we can conclude that: Money laundering is earning money by illegitimate and illegal ways and using different methods for its purification, in order to conceal its illegitimate sources and origins. Some of harmful effects of money laundering as can be mentioned as the social, economic, political on countries, and it may impose destruction of its economic bases and bring economical instability in countries. In these processes once large sums of money comes into financial markets and at other times of the laundering cycle, after purification, it goes out of the market. From the political point of view it also has some bad effects on the society. This crime makes the background prepared to some dangerous crimes organized by mafia gangs and some organized criminals. The outcome of this process is leaving their damaging effects on society.

Thus, making the proper laws to prevent money laundering is the best way to combat the criminal offenses of money laundering in countries and international organizations. However, in our laws, there is no independent law to combat money laundering, but there are examples in our law which is taken from jurisprudence and tries to address this issue and combat money laundering, such as Article 49 and Article 5
of the constitution and how to implement Article 49. Also Article 4 subjected to aggravation of perpetrators of bribery and embezzlement, and some other laws. Considering the devastating effects of money laundering in terms of political, social and economical, legislators need to combat the phenomenon by approving independent laws to directly pay for this crime.

The concept of money laundering

From the terminological view, "money laundering arising from a crime" or "money laundering" or "clearing views to the properties arising from a crime " are terms that are used to define the process. The expression, purification in Persian language means cleaning, washing shaking, pulling water and money is the tool of exchange (Dehkhoda, 1994). It is notable that, it is difficult to provide an accurate definition of money laundering which includes different aspects of it. This difficulty in the crimes with multiple aspects that are due to the differences in different system, are more extensive.

Therefore, the legal definition of money laundering which is a comprehensive and exclusive of the unrelated aspects, due to the wide range of aspects of it, is difficult (Burkan, 1999). But with all these difficulties experts of Legal and other sciences and organizations have attempted to provide relevant definition of it, which we refer to some of them.

In a definition of money laundering it goes as "Money laundering is a process during which the illegal proceeds of criminal origin of the money is shown to be legitimate. In other words, money laundering is a process during which the main sources of illegal money and revenues to be hidden (Asaadi, 2007). Some believe that: The crime of money laundering is the act of deliberately transportation of any kinds of illegal properties or possession or being a partner of them. The purpose of this transfer is to conceal its source and origin (Ghaemmaghami, 2004). Council of Europe Convention on Money Laundering Act 1988, the following acts has the form of money laundering:

- Conversion or transfer of property knowing that such properties are aroused from criminal acts and to hide or conceal the illicit source or to help any person involved in the base offense, in order to that person be able to rid of the punishment of his illegal actions.
- Hide and conceal the source, location, transferring of properties rights or having the properties, with the knowledge they have acquired by criminal processes.
- Gaining, consumption or use of the property with the knowledge that this property come from criminal acts (Bagherzadeh, 2007). Although the law has not provided a definition of money laundering, it has mentioned only to some examples of it. But based on these examples, a definition can be offered.
- Emam Ali in the sermon15 Nahjolbalagheh stated: "Unjustly given any money from the treasury of the property if I find them I transfer them back to their first positions even if they be the women's dowry and were scattered in different regions" (Abi alhadid , 2010).

Considering the various definitions of money laundering, it can be defined such that Money laundering is gaining revenues caused by illegitimate and illegal ways and use different methods for its purification, in order to conceal its source and origin.

Outcomes and effects of money laundering

Harmful effects of money laundering from the social, economic, political are imposed to the countries. Since this economy is considered a crime, and its origin is from another crime, the negative economic impacts of it are destruction and instability in the country's economy. Since in the process of money laundering the opportunists is to protect their currencies, thus they invest in an internal activity that has no profit for the country. And if they investment, it is to represent the purity for laundering the money and after purification they remove it from the economic cycle. In other words, in the process once large sums of money inters financial market and another time after cleaning it will be taken out of the economic cycle (Burkan, 1999). The false entry and exit of this capital of these committers unimaginable damage inflicted on the country's entire economic field, followed by the instability and chaos on the country's economy. In addition to the money laundering process makes the obtaining and collecting of taxes problematic for the countries.

The professional perpetrators of these criminal acts, even simply refuse to pay taxes and make the government control impaired in this section. On the other hand, money laundering measures the ability to enter and withdrawal of resources from a country, regardless of the size of the country's economic activity, this adversely affects exchange rate, which ultimately led to the disintegration of external sector and results in internal imbalances of the economy (Shirakvand, 2003).

From the social and political point of views this phenomenon can make the environment suitable to the other crimes. So consequently the cost of preventing and controlling crime in society will increase. and the talent that they can do mafia crimes can corrupt the financial system, especially in the banking networks and influence the economic powers and through this corruption make it hard for governments to control the countries and to establish the security in the country.
In short: This crime is an organized crime. The illegal activities of criminal groups with a unified structure refers mainly composed of the basic purpose of these activities to get money this way and often with fear and corruption will continue. "International Criminal Police Organization."

So since this crime is organized by mafia gangs, it leaves a huge damaging effect on society. Official corruption is an example of this type, in which the lowest ranks of the office to senior managers face the corruption. Due to this crime the corruption expands in the community. The crime of money laundering bankrupts private sector, cause the reduction in economic productivity, unequal distribution of income and thus further increases the gap existing in society and brings social corruption and may be responsible to the collapse of society in terms of political, cultural and social (Shams and Ebrahim., 2003).

The criminology of the money laundering

Every society has laws that vaccinate the community to sustain its survival against all types of crimes. Whenever there is a violation of rights of individuals in a society the legislature is required to prevent these crimes and protect the rights of people and then determine the punishment of the special crime.

According to jurisprudence and legal reasoning, we consider the presumption of innocence of the actions unless the negative is proven. Therefore when the lawmaker wants to survey a crime and make the laws to the crime, he must consider the community's acts and reactions to it and also respect the religious precepts about it. Increasing crime and lack of strong laws to deal with it, has made the national and international organizations to think it has a serious impact. Therefore, effective efforts in this area have done Including the Organization for Economic Cooperation and Development treaties, and the World Bank and International Monetary Fund in fighting money laundering can be cited (Shahriari, 2007) and also considering the laws of various states and countries we see that they are considering laws in most countries to combat money laundering and crimes of it.

For example, in France since 1987 fighting with drug trafficking and money laundering by passing a law was implemented. In the early stages when money laundering was a punishable offense that the proceeds of crimes was related to drugs. In the next stage, the outcomes of organized crimes were also subjected to anti-money laundering laws. And ultimately the cleansing of illegal incomes obtained from criminal act was taken to be a crime. The approved laws of 1987, which insisted on fighting drug trafficking and even hiding the incomes of drug trafficking are subjected to be a crime.

The law was the trigger for the confiscation of all or part of property of the criminals. And confiscation of movable or immovable, joint or debt, confiscation of equipment and tools used in production and revenues from drug production and drug trafficking provided became possible. On the other hand in France a law known as Trakfyn was created which it was established to combat money laundering proceeds of crime, and that it had the authority for twelve hours without a judicial order to seize assets suspected to money laundering action and after this time the court can extend the duration of assets seized or order to release them.

Switzerland also not escaped the negative consequences of this crime and directly at Article 305 of the Criminal law which was enacted in August 1990 and run through 1994 noticed to this issue. Based on this article making any attempt to stabilize the origin of the assets or hiding or the confiscation of assets derived from crime, became a crime (Mousavi Moghadam, 2007).

Although this criminal phenomenon is the result of globalization and passes the boundaries in the world to challenge the counties, unfortunately our country has to grapple with. Iran's penal system with reliable sources of jurisprudence and the various laws wants to combat it.

Jurisprudential criminalizing 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.

Thus, although perhaps for money laundering there is not as an independent religious sources but it should be noted that Islam is a comprehensive and authoritative sources of jurisprudence in all periods, and it is found that these acts are criminalized by the public jurisprudence recourses (Grayly, 2009) The following discussion will refer to some of them.

Corruption on earth

The approach of the Islamic penal system to the money laundering can be reviewed on its penal to the corruption on earth. So the verse of war and corruption on earth could be a reason for the criminalizing of this crime.
The people, who rise against of the Allah and his Prophet and cause corruption on the earth, are sentenced to be killed, crossed, and executed and amputation of hand and opposite leg and also rejected and exiled (Maedeh, verse 33).

The dignity of descent of the verse was such that a group of polytheists came to the Prophet Mohammad (PBUH) and accepted Islam, but the weather of Madineh was not compatible for them, and caused disease. Prophet (PBUH) ordered them go out of the town to live in good climate in which the camels were there and they could use fresh milk of the camels, but instead of this when they recovered, the killed Muslim shepherds and looted all the camels, Prophet (PBUH) ordered to arrest then, and the verse was revealed, and they were punished. It is necessary to mention that three different argues on the implications of this verse has been issued.

First argument: turning between two words, the issue is one thing that is “corruption on earth” and the war, is only one of these instances which is dedicated to the revolutionary cause corruption on earth is the final remark of all punishments because of its severity (Mohageg Ardabili, 1999).

Second argument: turning between two words, is appellant and therefore, the above two issues are independent, based on the theory the “corruption on earth” has punishment of killing independently and warrior against the God is the enemy of God is an issue of corruption on earth and their relation is absolute generality and specialty (Habib Zadeh, 2000).

Third argument: In this approach the second term is to clarify the first one and the war with corruption on earth are the two words came together which means that these penalties are applicable if the person or persons who are committing war are going to cause corruption on earth (Habib Zadeh, 2000). However among these three approaches, the first argument sounds to be affective because the aim of punishment is the eradication of corruption. So if the enemy of God must be punished is due to its severity and importance. In Islam when a crime goes to further the death penalty is proceed to it. So lining as possible, but the corruption is not an enemy.

Regarding the first argument it can be argued that corruption on earth, includes war and war is one of those instances.

In other words corruption on earth is other than a Casual Verse 32 Maedeh which committer gets the maximum punishment, thus if about money laundering the corruption is not so huge, the sentenced must not be killed. According to the secondary precepts an emergency exists about money laundering and the Islamic goal of punishment is to eradicate the corruption. Thus the person can be punished according to the level of corruption that he has done. So if the level of corruption is punishable by death penalty he would be killed, and if it is less than this he would not.

**Expedience**

As we have stated Islam is for all times, and in every ages new issues also occur for which there is no sentence in Islamic resources. It should be noted that according to the general rule of Islam when a new issue come, based on general topics associated with that sentence, the punishment is imposed. (It should be noted that here is a difference between the expedience and necessity, in expedience the act is prescribed, but in the necessity action is required) (Najafi, 1980). In addition the role of time and place in the jurisprudence suggests that the jurisprudence is influenced with the two elements of time and space. Among these influences, the diagnosis and determination of necessity, especially in social and governmental issues can be referred. Accordingly, today for the Islamic community corruption and money laundering have adverse effects on economic, social and political, because of this the supreme leader of the Islamic society has established the related orders (Grayly, 2009).

**Eating the wrong property**

One of the verses that could be indicative the prohibition of money laundering is as follows. Do not eat each other's property in a wrong way (Nisa, verse 29).

In the interpretation of this verse it has been told that: First, the meaning of the eating is absolute possession of property and not specific eating, and eating the wrong property is prohibited and punishable (Mohageg Ardabili, 1999) and also a number of scholars have said that this means getting someones property in a way like robbery and usurpation, or not by these ways, but because it has came by non-religious way like gambling and usury etc it is forbidden (Sias, 1999).

It seems that the money laundering is subjected to the second reason and earnin this way is prohibited. However, that money laundering does not directly generate income, but only appears to legitimize the illegitimate money, so the evidence shows that money laundering is illegal and the Islamic ruling could give the expediency to sanction money laundering and to declare it unlawful.

Carefully considering the money laundering laws, it seems like the crime of money laundering in some cases seem inconsistent with some of the principles and rules of jurisprudence and legal certainty, and
is in conflict with them. This section refers to some of these rules appear to conflict with the present action to resolve conflicts.

1 - The leading rule, this rule is in conflict with money laundering laws.

The concept of this rule can be stated as the goods in the Muslims market and there trade is taken to be pure and correct and there is no need to search on the validity of these acts and. No need for search and research of property ownership and its purity, and can use, buy and sell them (Heydari, 2004) We not that If we be sever on the issue and take the probability that the property is no legal or it has come from a bad way like robbery or it was taken from someone else by force, the Muslims market cannot work properly and it brings chaos to the market (Heydari, 2004).

2 - No harm rule: different views on this rule by some scholars and jurists have been present.

According to one of the views being forbidden to do harm to others and handling losses and harm to others is forbidden and indicate the legislator to compensate (Shahid Sani, 2010). Another opinion as the negation of the hurt has been pointed, the legislator has not imposed any harm, in other words, any order issued by the Sharia, which is harmful, or it is self-harm or financial or non-financial, and the order has been revoked according to this rule (Naraghi, 1997).

Sheikh Ansari has also the same opinion and it is notable that this view is stronger than the others. So our sense is such that any judgment issued, if is harmful, whether cause financial or non financial loss, must be revoked and removed. In order to implement this rule to Money laundering and solve conflicts the two approaches are conceivable:

First, although we have no basis for criminalizing of money laundering, according to this procedure and its harms for the community and the Islamic system as well as irreparable affects of it, the money laundering can be criminalized. Secondly, based on laws and rules to combat money laundering, losses are imposed to the individuals. Causing harm and inconvenience to persons who are not even involved in money laundering, so according to this rule, the government has no right to harm others and the second disadvantage is the result of money laundering operations.

It is notable that the disadvantages of money laundering appears in all aspects of society and if not be prevented can damage the society from the political social point of views and has bad effects on economical systems, and wide spreads corruption at various levels. It also strengthens the terrorist gangs and mafia in advanced stages, and brings legislative acts in favor of criminals, or it can prevent any act against the criminals (Mir Mohammad, 1996).

Finally, according to the wisdom judgment, the losses on society and government are blocked, in spite of the fact that some minor harm may be imposed to some individuals. The three solutions mentioned include:

First: special disadvantage imposed to one person, in order to avoid the disadvantage imposed to more than one person can be tolerated. Secondly: severe disadvantage with minor one is eliminated. Thirdly, if you had a conflict with two losses, larger losses are eliminated.

3 - The innocence principle: the principle of innocence is one of the corrupted principles in the process of money laundering, which is in conflict with it. The presumption of innocence has been issued in many religious books. many of the money laundering acts that we know of prior offenses, includes ordinary and everyday activities that are not only contrary to law but also are in line with economic developments, which are normally quite lawful value (Grayly, 2009).

The advances in technology have made it easier to perform these actions by the perpetrators. So being guilty overcomes the principle of innocence, since the crimes can be done easily and need to be highly blocked. So the interest of Islamic society and the necessity to end this process makes the conflict to be solved.

The legal criminalizing of money laundering

Of course, in our laws, there is no law to combat money laundering, but the examples in the constitutions and ordinary law can be found which is taken from jurisprudence. To follow Islamic law, property rights are respected in Iran and in strict juridical documents the legitimate property of the population is respected and it is presumed what the person owns is for him, unless the contrary is proved. In Iran's law the property with illegal origin cannot be cleansed by any kind of money laundering process and it is illegal. Therefore the money laundering process is not legal in Iran and according to the documents it must be combated. Some of these documents can be mentioned as follows:

The Article 49 of constitution

This principle requires. “The government is obliged to pass the wealth resulting from usury, usurpation, bribery, embezzlement, theft, gambling, abuse of the endowments, misuse of a government contract or transaction, established places to corruption and other illegitimate affairs to the rightful owner and
in the case of his absence to give it to the public treasury. This sentence should be investigated and legal
evidence to be executed by the government. This article refers to the wealth of riches, which is illegal or
illegitimate wealth came without effort and doing the basic work or be produced only in covert operations or
knowledge of market conditions and needs of people with special social and political situations, which is
contrary to Sharia law and the regulations (Zakeri, 1997). In several narratives it is mentioned that these
types of wealth are illegitimate, for example, usury is a way of amassing wealth, which is interpreted to "Soht"
contrary to Sharia law and the regulations (Zakeri, 1997). In several narratives it is mentioned that these
kinds of wealth are illegitimate, for example, usury is a way of amassing wealth, which is interpreted to "Soht"
(Kulayni, 2009).

In addition to those mentioned, in 05/17/1363 in line with the implementation of Article 49 of the
constitution, "the implementation of Article 49 constitution was approved by Parliament. In 13 articles of Article
5 the implementation of Article 49 of the constitution the possibility of illegitimacy of the property are
mentioned. But most of relevant approved in connection with the money laundering is Article 14, the
implementation of the Article 49 of the constitution. According to this Article "any transformation of properties
subject to Article 49 of Islamic Republic of Iran's constitution, in order to evade the law, after proving is null.
The transferor is convicted to deceiving". What is logical is that, the legislator only has subjected the
criminals of Article 1 (bribery embezzlement and fraud) to be punished in Article 49 of the constitution. This
restriction makes the law not to be comprehensive. Thus intervene in any such property must be considered
a crime. Another point is that knowledge of transferor and also his intention to evade the provisions of this
Article is required. So if someone attempted to transfer properties and don’t know that it is illegal or has other
purposes of transferring the properties he is not committed a crime (Shahryari, 2007).

Articles 28 and 30 of anti-drug laws

According to Article 28: “All properties of the drug trafficking, and also a fugitives accused of having
properties subject to this Article, if there is sufficient evidence for the confiscation, will be recorded in favor of
the government and are not subject to Article 53 of constitution related to governmental properties”.
According to Article 30 “the tools of carrying illegal drugs are seized in favor of the government.”

Article 4 of the perpetrators of bribery, embezzlement and fraud

In Article 4 of aggravated of the perpetrators of bribery, embezzlement and fraud approved by
detection Assembly in 09/15/1367 it goes: "people who established or who lead many people to the network
of bribery, embezzlement and fraud beside recording all movable and immovable properties which have been
obtained through bribery, in favor of the government and returning the properties to the government or
individuals, are sentenced to a fine equal to the sum of its properties and permanent dismissal from
government service and are convicted to imprisonment of fifteen years to life imprisonment, and if they are
subjected to corruption on earth, they will be punished according to corruption on earth punishment.

In addition, many other documents, such as Articles, 9 and 10, Penal Code, Article 31 of the
suspended state about health, Article 13 the safeguarding measures approved in 02/12/1339, ... could be an
indication of money laundering.

Conclusion

Money laundering is the consequences of globalization, which along with improvements in science
and technology, has been putting the international community in terms of economic, social and political in
ups and downs. So because this fundamental problem is considered nowadays, the definition was not
provided for in law. But as was stated in the era of the Prophet (PBUH) and infallible Imams, tools of crimes
were not as widespread as today. But since Islam is for all periods, in spite of fact that we cannot find
independent juridical sources for money laundering, but carefully considering the Islamic resources we can
find some the fighting evidences against money laundering. In the laws of our country although there is no
independent law of fighting against money laundering, but in the constitution and other laws some can be
found, which can be related to money laundering. Such as Article 49 and Article 5 of the constitution and
how to implement Article 49, also Article 4 of the aggravation of perpetrators of bribery and embezzlement,
and other laws. Considering that the damaging effects of money laundering, in terms of political, social and
economical to the country, the legislators need to combat this phenomenon by enacting independent laws, to
directly pay for this crime. Consequently it is recommended that:
First: our legislators prevent the damaging effects of this crime, by criminalizing this issue, and approving an independent law entitled "Law on Combating Money Laundering".

Secondly, some cases can be found in our laws that provide a mechanism for money laundering operations. Including "Corruption trade laws and trade regulations, etc. ..." The legislator by amending these rules can destroy and make a serious obstacle in front of these crimes.

Thirdly, law enforcement agencies and security cooperation, and establishing relationships with other agencies and foreign institutions will have a significant impact to combat money laundering and the prevention of this crime.

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