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**ANTI-MONEY LAUNDERING LAW AS A LEGAL MECHANISM
TO COMBAT CORRUPTION IN MALAYSIA**



**DOCTOR OF PHILOSOPHY
UNIVERSITI UTARA MALAYSIA
2018**

**ANTI-MONEY LAUNDERING LAW AS A LEGAL MECHANISM
TO COMBAT CORRUPTION IN MALAYSIA**



**A thesis submitted to the Ghazali Shafie Graduate School of Government in
fulfillment of the requirements for the Doctor of Philosophy (Universiti Utara
Malaysia)**



Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
(College of Law, Government and International Studies)
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ABSTRACT

Money laundering is a process of disguising proceeds from unlawful activities and has been a complex crime globally. Developed and developing countries establish anti-money laundering regimes in the view to combat this ever-challenging crime. Corruption is an act which involves abuse of power in return for illicit and private gains. Corruption is considered as one of the predicate offences which utilises the process of laundering those illicit gains. Both money laundering and corruption have immense impact on social, financial and economic sectors. In Malaysia, Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA) and Malaysian Anti-Corruption Commission Act 2009 (MACCA) are primary legislations enacted to combat money laundering and corruption respectively. Little study or research has been carried out on the effectiveness of utilising forfeiture regime under anti-money laundering law to combat corruption in Malaysia. This study attempts to investigate whether the current forfeiture regime under AMLATFPUAA is effective in fighting corruption. A comparative analysis between AMLATFPUAA and MACCA forfeiture provisions is done. This study is a doctrinal research where the researcher relies mainly on case laws, legislations and published materials such as journal articles. Findings show that forfeiture provisions are tools to ensure criminals do not escape with the benefits from the unlawful acts. Forfeiture halts the financial system of criminal organisations. Hence, they may not be able to commit further crimes. A comparative analysis discovers that AMLATFPUAA is more comprehensive than MACCA in terms of punishment for the offences, duration of forfeiture, freezing and seizure, and procedure and circumstances covered. Several recommendations are put forward here such as combining enforcement plans for anti-corruption and anti-money laundering, increasing the implementation of extraterritoriality, providing adequate training for legal enforcers, and increasing punishment for non-compliance of forfeiture order as well as for corruption. The recommendations given are for the enforcement agencies to consider for future improvements.

Keywords: Money Laundering, Corruption, Predicate Offence, AMLATFPUAA, Malaysia.

ABSTRAK

Pengubahan wang adalah proses penyamaran dan pembersihan ‘wang haram’ hasil daripada aktiviti yang menyalahi undang-undang yang telah menjadi satu jenayah yang kompleks di seluruh dunia. Negara maju dan membangun menubuhkan rejim anti perubahan wang haram dalam usaha untuk memerangi jenayah yang mencabar ini. Rasuah dianggap sebagai salah satu kesalahan predikat yang menggunakan proses perubahan hasil daripada aktiviti haram. Kedua-dua perubahan wang haram dan rasuah mempunyai kesan yang besar terhadap sektor sosial, kewangan dan ekonomi. Di Malaysia, Akta Pencegahan Perubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 (AMLATFPUAA) dan Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 (MACCA) adalah perundangan dan mekanisme utama yang digubal dalam memerangi perubahan wang haram dan rasuah. Sedikit kajian atau penyelidikan telah dijalankan ke atas keberkesanan penggunaan rejim pelucuthakan di bawah undang-undang anti-perubahan wang haram untuk memerangi rasuah di Malaysia. Kajian ini bertujuan untuk menyiasat sama ada rejim pelucuthakan di bawah AMLATFPUAA berkesan dalam memerangi rasuah. Analisis perbandingan antara peruntukan pelucuthakan AMLATFPUAA dan MACCA telah dibuat. Kajian adalah berdasarkan kepada penyelidikan doktrinal di mana statut, kes mahkamah dan bahan yang diterbitkan seperti artikel jurnal telah digunakan. Kajian menunjukkan bahawa peruntukan pelucuthakan adalah mekanisme untuk memastikan penjenayah tidak melarikan diri dengan hasil daripada aktiviti-aktiviti haram. Pelucuthakan memastikan sistem kewangan organisasi jenayah disekat. Oleh itu, mereka mungkin tidak dapat meneruskan aktiviti jenayah mereka lagi. Berdasarkan analisis perbandingan, ia dikenal pasti bahawa AMLATFPUAA adalah lebih menyeluruh daripada MACCA dari segi hukuman bagi kesalahan-kesalahan, tempoh pelucuthakan, pembekuan dan penyitaan, dan prosedur dan situasi yang diliputi oleh Akta ini. Penyelidik mengusulkan beberapa cadangan seperti menggabungkan pelan penguatkuasaan untuk anti-rasuah dan perubahan wang haram, merangkumi kawasan luar negara bagi penguatkuasaan, menyediakan latihan yang mencukupi untuk penguatkuasa undang-undang, mengurangkan jumlah untuk urusan yang mencurigakan dan meningkatkan hukuman bagi yang tidak mematuhi perintah pelucuthakan dan juga yang terlibat dalam rasuah. Cadangan-cadangan ini adalah untuk agensi-agensi penguatkuasaan menambahbaik tindakan pada masa depan.

Kata Kunci: Perubahan Wang Haram, Rasuah, Kesalahan Predikat, AMLATFPUAA, Malaysia.

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DEDICATION

*To my husband, Naveeyindren Thangarajah,
parents,
and my beautiful daughter, Kayalvizhy Abhiramii,
With love.*



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*Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful
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Dangerous Drugs (Forfeiture of Property) Act 1988 (DDFP)

Elections Offences Act 1954

Excise Act 1976

Malaysian Anti-Corruption Commission Act 2009 (MACCA)

Mutual Assistance in Criminal Matters 2002 (MACMA)

Proceeds of Crime Act 2002 (POCA)

The Customs Act 1967

The Labuan Offshore Trust Act 1996

The Penal Code



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Appendix 1	E-mail Correspondence with BNM Officer
Appendix 2	List of Interview Questions



LIST OF ABBREVIATIONS

ACAB	Anti-Corruption Advisory Board
ACA	Anti-Corruption Act 1997
AG	Attorney General
AGC	Attorney General's Chamber
AMEJ	All Malaysia Electronic Judgements
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering and Counter Financing of Terrorism
AMLA	Anti-Money Laundering Act 2001
AMLAC	Anti-Money Laundering and Corruption
AMLATFA	Anti-Money Laundering and Anti-Terrorism Financing Act 2001
AMLATFPUAA	Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001
AMR	All Malaysia Report
APG	Asia/Pacific Group on Money Laundering
ASEAN	Association of Southeast Asian Nations
AusTRAC	Australian Transaction Reports and Analysis Centre
BAFIA	Banking and Financial Institutions Act 1989
BCCI	Bank of Credit and Commerce International
BNM	<i>Bank Negara Malaysia</i>
BNP	<i>Banque Nationale de Paris</i>
CC	Complaints Committee
CCPP	Consultation and Corruption Prevention Panel
CDD	Customer Due Diligence
CLJ	Current Law Journal
CPC	Criminal Procedure Code
CPI	Corruption Perception Index
CRIM	Organised Crime, Corruption and Money Laundering
CTC	Counter-Terrorism Committee
CTR	Currency Transaction Report
CTR	Cash Threshold Report
DDA	Dangerous Drugs Act 1988

DDFP	Dangerous Drugs (Forfeiture of Property) Act 1988
DNAA	Discharge Not Amounting to Acquittal
DPP	Deputy Public Prosecutor
DTA	Drug Trafficking Act 1994
ESAAMLG	Eastern and Southern Africa Anti Money Laundering Group
EU	European Union
FATF	Financial Action Task Force
FBI	Federal Bureau of Investigation
FIU	Financial Intelligence Unit
FPO	Foreign Public Official
FSRB	FATF-Style Regional Bodies
FTRA	Financial Transactions Reports Act 1988
GAFI	<i>Groupe d'action financière</i>
GBP	Great British Pound
GDP	Gross Domestic Product
GLC	Government-Linked Companies
GTP	Government Transformation Programme
HSBC	Hong Kong Shanghai Banking Corporation
IMF	International Monetary Fund
IO	Investigation Officer
IOFC	Labuan International Offshore Financial Centre
IP	Investigation Paper
ISIL	Islamic State of Iraq and the Levant
ISP	Interim Strategic Plan (ISP)
LNS	Legal Network Series
MACA	Malaysian Anti-Corruption Agency
MACC	Malaysian Anti-Corruption Commission
MACCA	Malaysian Anti-Corruption Commission Act 2009
MACMA	Mutual Assistance in Criminal Matters 2002
ML	Money Laundering
ML / TF	Money Laundering / Terrorist Financing
MLJ	Malayan Law Journal
NBI	National Bureau of Investigation
NCC	National Coordination Committee

NFA	No Further Action
NGO	Non-Governmental Organisation
NKRA	National Key Results Areas
NRA	National Risks Assessment
OECD	Organisation for Economic Corporation and Development
OFC	Offshore Financial Centre
ORP	Operations Review Panel
PDRM	<i>Polis Diraja Malaysia</i>
POCA	Proceeds of Crime Act 2002
PP	Public Prosecutor
PPO	Pecuniary Penalty Order
RM	<i>Ringgit Malaysia</i>
RMC	Royal Malaysian Customs
RMP	Royal Malaysia Police
RMT	<i>Rancangan Makanan Tambahan</i>
SHTJ	<i>Setem Hasil Tanah Johor</i>
SCC	Special Committee on Corruption
SOP	Standard Operating Procedure
SPMA	Special Preventive Measures Act 1985
SPRM	<i>Suruhanjaya Pencegahan Rasuah Malaysia</i>
SSCC	Special Sessions Courts for Corruption
STR	Suspicious Transaction Report
TI	Transparency International
TOC	Transnational Organized Crime
UK	United Kingdom
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNDCP	United Nations Drug Control Programme
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
US	United States
USD	United States Dollar
WEF	World Economic Forum

CHAPTER ONE

INTRODUCTION

*“Earth provides enough to satisfy every man’s need, but not every man’s greed.”
-Mahatma Gandhi.*

1.1 Background of the Study

Money laundering is a process of ‘cleaning’ ‘dirty’ monies and technological mechanisms assist the launderers in concealing the trail of the monies which lead back to the predicate crime. The crime of money laundering has been illustrated as the means of support for many other crimes and is the main threat to the economic and social security of societies. These activities have become global problems in the late twentieth century similar to the increase in drug trade. The term has been widely acknowledged and popularly being employed.¹

As the origins of criminal proceeds were regularly from drug trafficking, many law enforcers have now expanded their applications to offences such as human trafficking, cybercrime, illegal arms sale and smuggling. Many countries such as Malaysia, the United Kingdom (UK), Australia, United States of America (US) and Switzerland

¹ Anusha Aurasu and Aspalella Abdul Rahman, “Forfeiture of criminal proceeds under anti-money laundering laws: a comparative analysis between Malaysia and United Kingdom (UK),” *Journal of Money Laundering Control* 21, no. 1 (2018): 104.

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APPENDICES

Appendix 1: E-mail Correspondence with BNM Officer

From: ANUSHA A/P AURASU <anushaa@acd.tarc.edu.my>
Date: 2016-07-19 11:31 GMT+08:00
Subject: PEMOHONAN MENEMURUMAH PEGAWAI DI BAHAGIAN PENASIHATAN, POLISI DAN UNDANG-UNDANG, BANK NEGARA MALAYSIA
To: bnmtelelink@bnm.gov.my

Tuan/Puan,

Merujuk kepada perkara diatas, saya Anusha a/p Aurasu, seorang pelajar kedoktoran (Ph.D) dari Universiti Utara Malaysia ingin menemuramah pegawai-pegawai di Bank Negara Malaysia berkaitan dengan kajian saya. Dengan e-mel ini, saya melampirkan surat kebenaran bagi temuramah.

Saya berharap tuan/puan akan memberi maklumbalas secepat mungkin. Segala perhatian dan kerjasama tuan/puan didahului dengan ucapan jutaan terima kasih.

Sekian.

Anusha Aurasu,
Pensyarah
Pusat Pengajian Pra-Universiti,
Kolej Universiti Tunku Abdul Rahman,
Jalan Genting Kelang, Setapak,
53300 Kuala Lumpur.

@bnm.gov.my>
to anushaa, 

8/2/16

Dear Ms Anusha,

We refer to your e-mail to our BNMTelelink on this matter. We would appreciate if you could share the following for our consideration:

1. What is the nature of your research; i.e for PhD thesis or journal?. Would it be made public?
2. Could you please share the list of questions or scope of your interview with us first for our assessment?

At the meantime, we would like to share about our microsite on AML (<http://amlcft.bnm.gov.my/>) that could be relevant in your research, as this website explained about Malaysia's regime in fighting money laundering and relevant predicate offences including corruption.

This website discussed comprehensively about Malaysia legal & regulatory framework, preventive measures, enforcement as well as domestic and international cooperation.

In addition, you may want to have a look at Malaysia's active participation in fighting AML through Financial Action Task Force (FATF - <http://www.fatf-gafi.org/>). This includes the recent mutual assessment by the FATF on Malaysia's compliance and effectiveness towards international standards in fighting AML.

From: ANUSHA A/P AURASU <anushaa@acd.tarc.edu.my>
Date: 2016-07-19 11:31 GMT+08:00
Subject: PEMOHONAN MENEMURUMAH PEGAWAI DI BAHAGIAN PENASIHATAN, POLISI DAN UNDANG-UNDANG, BANK NEGARA MALAYSIA
To: bnmtelelink@bnm.gov.my

Tuan/Puan,

Merujuk kepada perkara diatas, saya Anusha a/p Aurasu, seorang pelajar kedoktoran (Ph.D) dari Universiti Utara Malaysia ingin menemuramah pegawai-pegawai di Bank Negara Malaysia berkaitan dengan kajian saya. Dengan e-mel ini, saya melampirkan surat kebenaran bagi temuramah.

Saya berharap tuan/puan akan memberi maklumbalas secepat mungkin. Segala perhatian dan kerjasama tuan/puan didahului dengan ucapan jutaan terima kasih.

Sekian.

Anusha Aurasu,
Pensyarah
Pusat Pengajian Pra-Universiti,
Kolej Universiti Tunku Abdul Rahman,
Jalan Genting Kelang, Setapak,
53300 Kuala Lumpur.

[REDACTED]@bnm.gov.my>
to anushaa, [REDACTED]

8/2/16

Dear Ms Anusha,

We refer to your e-mail to our BNMTelink on this matter. We would appreciate if you could share the following for our consideration:

1. What is the nature of your research; i.e for PhD thesis or journal?. Would it be made public?
2. Could you please share the list of questions or scope of your interview with us first for our assessment?

At the meantime, we would like to share about our microsite on AML (<http://amicft.bnm.gov.my/>) that could be relevant in your research, as this website explained about Malaysia's regime in fighting money laundering and relevant predicate offences including corruption.

This website discussed comprehensively about Malaysia legal & regulatory framework, preventive measures, enforcement as well as domestic and international cooperation.

In addition, you may want to have a look at Malaysia's active participation in fighting AML through Financial Action Task Force (FATF -<http://www.fatf-gafi.org/>). This includes the recent mutual assessment by the FATF on Malaysia's compliance and effectiveness towards international standards in fighting AML.

ANUSHA A/P AURASU <anushaa@acd.tarc.edu.my>

8/11/16

to Asraf

Dear [REDACTED]

Thank you for the prompt reply. I am a Ph.D candidate (going into my 4th semester). The aim of the interview is to support my research problem and objectives. It is indeed for my Ph.D thesis. It will be made public i.e. as reference in the library or might be published as an article in the future if successful. Kindly refer to the attachment as I have provided a few possible questions which will be asked to interviewees. Hope this may assist you in allowing me to carry out the process. If you have any other doubts/questions, please do not hesitate to ask me.

Many thanks,

A. Anusha.

Lecturer,

Tunku Abdul Rahman University College,

Setapak, Kuala Lumpur.

[REDACTED]@bnm.gov.my>
to ANUSHA, [REDACTED]

11/22/16

Hi Anusha,

Sorry for the long wait.

We are sorry to inform you that, as a matter of internal policy, we are not able to accommodate your request for the interview.

We would like to recommend the following websites, which might be useful for your research:

FATF Works on Corruption :

[http://www.fatf-gafi.org/publications/corruption/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/corruption/?hf=10&b=0&s=desc(fatf_releasedate))

UNCAC Report on Malaysia :

https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2014_02_04_Malaysia_Final_Country_Report.pdf

Wishing you all the best.

Thank you

Best regards,

Bank Negara Malaysia

Tel : [REDACTED]

<http://amicft.bnm.gov.my/>.

Appendix 2: List of Interview Questions

1. Could you please tell me about yourself and your experience?
2. Can you tell me about AG's role in fighting against money laundering?
3. How do you ensure constant supervision over this crime?
4. What are the legal issues with regards to the implementation of AML laws in Malaysia?
5. What are the actions taken to overcome the issue identified?
6. What is the standard of procedure when the AGs handles money laundering cases?
7. How does the AG relate money laundering with corruption?
8. Can AML laws be utilised to combat corruption?
9. What differences it can make if AML laws are utilised in combating corruption?
10. What is the role of forfeiture in fighting against money laundering?
11. Is forfeiture of proceeds of the crime be the best tool to prevent this crime?
What do you think?
12. How effective will it be if forfeiture is utilised in combating corruption?
13. To what extent will the Malaysian AML laws act as assistance to the enforcement agencies in combating corrupt activities?