Electronic Research Journal of Social Sciences and Humanities
ISSN: 2706 – 8242 www.eresearchjournal.com
Vol 6: Issue I
Jan-Mar 2024

# The Role of Banking Institutions in Preventing Money Laundering Practices in Indonesia; a Normative Study and Islamic Law

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## Abstract

The crime of money laundering at this moment in time is also a delinquency that is increasingly receiving special attention from various groups, not only on a national scale but also regionally and globally through cooperation between countries. This movement was sparked by the growing prevalence of money laundering crimes over time. As a response, various international organizations have taken concrete steps to address this issue. This study employs normative and empirical legal methods, including field research and library research. Field research involves direct observations and interviews, while library research entails examining legal regulations and relevant literature. The research findings indicate that banks play a crucial role in preventing money laundering crimes by implementing know-your-customer procedures, conducting regular reports, and analyzing transactions for suspicious activities. Other efforts are also made to coordinate with related parties to create effective steps that can be taken to prevent and eradicate money laundering crimes.

**Keywords:** Role, banking, prevention, money laundering

## Introduction:

The issue of money laundering has recently garnered heightened scrutiny from various stakeholders, not only domestically but also on a regional and global scale through inter-country collaborations. This surge in attention stems from the escalating prevalence of money laundering offences over time, prompting numerous international bodies to implement proactive measures to address this challenge. Concurrently, financial service providers, particularly institutions and

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banks, are witnessing technological advancements that are reshaping their operations. Evidence of this can be observed in the diverse strategies adopted by these entities to entice customers to deposit their funds (Jahja, 2012).

The integration of technology into the contemporary banking landscape has heightened concerns over the prevalence of potential money laundering schemes within financial institutions (Siahaan, 2005). Money laundering, a clandestine process aimed at concealing illicit proceeds stemming from activities such as corruption, gambling, narcotics, theft, smuggling, terrorism, fraud, and embezzlement, is frequently facilitated through the intricate channels of the banking system. Notably, perpetrators of these unlawful activities often occupy influential positions within society, spanning from government officials to affluent business figures. The gravity of this illicit conduct cannot be overstated, as it poses formidable risks to both societal integrity and economic stability, potentially undermining the very foundation of a nation's financial health.

On June 20, 2005, the Financial Action "Tusk Force (FATE) included Indonesia as a Non-Cooperative Counties or Territories (NCCTS) or a region that is not cooperative in handling money laundering cases. If Indonesia and other countries do not handle money laundering seriously, then international institutions will still provide sanctions in the form of obstacles to banking transactions such as transfers (letters of credit), foreign loans and others (Raharjo, 2002). Money laundering transcends mere national borders, morphing into a global phenomenon that breaches the jurisdictional confines of individual nations and countries. As such, its pervasive nature renders it a universal concern, capable of extending its tendrils across regional and international boundaries, thereby morphing into a formidable transnational issue (Masciandaro, 2005). The advent of advanced information technology has catalyzed this phenomenon, empowering individuals to perpetrate money laundering schemes without the need for physical travel abroad.

In today's interconnected world, the proliferation of cyberspace and electronic banking systems has facilitated the execution of money laundering activities with unprecedented ease and sophistication. Through cyber payment mechanisms, individuals can clandestinely transfer illicit funds across borders, evading traditional banking regulations and oversight. Moreover, the anonymity afforded by these digital platforms enables money launderers to mask their identities, further complicating law enforcement efforts to apprehend and prosecute offenders. Furthermore, the clandestine nature of money laundering operations amplifies its transnational reach, as perpetrators can exploit regulatory disparities and loopholes in various jurisdictions to their advantage. By strategically leveraging international financial systems, individuals can obfuscate the origins of illicit funds and launder them through complex networks of shell companies and offshore accounts.

The ramifications of this globalized form of money laundering are profound and multifaceted. Beyond its immediate economic repercussions, such as undermining market integrity and distorting asset prices, money laundering poses grave threats to national security and geopolitical stability. Illicit funds laundered through international channels can fuel organized crime syndicates, terrorism financing, and political corruption, thereby exacerbating social unrest and eroding public trust in governmental institutions.

In light of these realities, combating money laundering requires a concerted and coordinated effort on both national and international fronts. Strengthening regulatory frameworks, enhancing cross-border cooperation among law enforcement agencies, and bolstering financial transparency mechanisms are indispensable steps towards mitigating the scourge of transnational money laundering (Dirdjosisworo, 2002). Only through collective action and unwavering commitment to uphold the rule of law can we effectively safeguard the integrity of the global financial system and preserve the security and prosperity of nations worldwide.

Efforts to eradicate money laundering practices are highly expected by the role of banking institutions. In the national context, it is regulated in Law Number 10 of 1998 concerning Banking and legal efforts to prevent money laundering practices are regulated in Law Number 25 of 2003 concerning Money Laundering (UUPU). Article 18 of Law Number 25 of 2003 concerning Money Laundering (Sutedi, 2018) states that:

i. To prevent and eradicate criminal acts of money laundering, with this Law, PPATK is established.
ii. PPATK as mentioned in paragraph (1) is an independent institution in carrying out its duties and authority.
iii. PPATK is responsible to the President.

Based on these provisions, it is clear that whatever the circumstances, the practice of money laundering must be immediately addressed to prevent the country's economy from hampering as well as Article 13 paragraph (1) of Law Number 25 of 2003 concerning money laundering determines. Financial service providers are required to submit reports to PPATK as intended in Chapter V for matters as follows:

i. Suspicious financial transactions
ii. Financial transactions carried out in cash in a cumulative amount of Rp. 500,000,000; (Five Hundred Million Rupiah) or more or equivalent value, whether carried out in one transaction or several transactions within 1 (one) working day

The difficulty of identifying money laundering practices is due to how neatly this action is carried out, and carrying out money laundering through the banking system does not give rise to direct suspicion so no losses arise. This is the active role of banking in protecting the confidentiality of its customers who save money from the proceeds of crime. This is the reason why money laundering practices often cannot be discovered by law enforcement officials. Knowing that money laundering practices exist cannot be separated from the bank itself. The bank plays an important role in the practice of money laundering. But in reality, many banks hide their money laundering practices. This is due to the assumption that banks can progress and develop because people save a lot of funds and use banking services to store and process customer funds and wealth.

**Literature Review:**

**Definition of money laundering:** Money Laundering can be termed money laundering, or money bleaching. In the 2002 UUPU - the term Money Laundering is referred to as money laundering, as stated in the law. Law no. 15 of 2002 which has been amended by Law no. 23 of 2003, states: money laundering is the act of placing, transferring, paying, spending, donating, donating, multiplying, taking abroad, utilizing or other acts of wealth that are known or reasonably suspected to be the proceeds of a criminal act to conceal, or package the origin of assets so that they appear to be legitimate assets (Force, 1999). Based on several definitions and explanations regarding what is meant by money laundering, it can be concluded that money laundering or money laundering is a series of activities which are processes carried out by a person or organization with illicit money, namely money originating from criminal acts (Wiyono, 2022).

To hide or disguise the origin of the money from the government or authorized authority, taking action against criminal acts by, among other things, first entering the money into the financial system so that it can then be removed from the financial system as halal money:

**Stages in the Money Laundering Process:** It is not easy to prove the existence of money laundering, because the activity is very complex. However, experts have succeeded in classifying the money laundering process into three stages. The three stages are:

i. **Fund Determination Stage (Placement):** This stage is an effort to place funds generated from criminal activism, for example by depositing the proceeds of crime into a financial system that is considered safe for a temporary period. Then it is made by means

   a. “It is embedded by paying legally at various financial institutions
   b. This is true by carrying out cash transactions, for example: in retail activities (antiques, jewels, restaurants, nightclubs, bars, gambling) (Fuady, 1999).

ii. **Layering Stage:** This second stage is by layering. Various methods can be done through stages, one of which is removing the location, both the characteristics of the existence and the origin of the money. For example,

   a. Holdings are made on the stock exchange
   b. Transfer money to another country in the form of foreign currency mats
   c. Buying foreign exchange (Atmasasmita, 2003).

   It often happens that the custodian of the funds is not the actual owner and the custodian of the funds is already a distant layer because he has tried to save it many times before. This method can also be used, for example, the owner of the money obtained from crime asks for credit at the bank and the dirty money is used to legally finance a business activity. By doing this, the legal business activities are not the result of dirty money but rather from obtaining bank credit.

iii. **Integration Stage:** This stage is the reunification of the proceeds of crime. After going through the placement or layering stages, the money is then used in various legal activities.

**Causative Factors - Money Laundering Practices:** The factors causing Money Laundering are very complex. The various factors driving the practice of money laundering range from government bureaucracy, and the banking system, to the heavy social costs and life difficulties experienced by the people. A number of these factors can be inventoried into several causes such as:

i. **The Stringent Bank Secrecy Factor:** Strict bank regulations regarding the confidentiality of matters and account data make it difficult for owners of illicit funds to be tracked and touched. With this bank secrecy system, there is a provision to prohibit banks from disclosing account data and other information from their customers. Because this system is heavily driven by money launderers, various international organizations such as the FATF and IMF urge that this bank secrecy system not be implemented strictly, to overcome money laundering practices in fund-providing institutions, especially banks. Based on the sound of Article 40 paragraph (1) of Law no. 10 of 1998 stipulates "Banks are obliged to keep confidential information regarding depositors and their deposits, except in cases as intended in Article 41 A, Article 42, Article 43, Article 44 A"

With these factors, the only aspect that concerns bank secrecy concerns the depositor aspect. However, as long as there are confidentiality regulations for customers (depositors), the problem of money laundering will certainly not end, because as said earlier, it is a sophisticated laundering tool for corruptors and criminals. Seeing that bank secret media has the potential to be a means of protection for storing money in banks, based on Article 33 paragraph 2 UUPU, for examination in money laundering criminal cases, investigators, prosecutors or judges have the authority to request information from financial service providers regarding the assets of any person who has been reported by the (Kurniawan, & Akbar, R.2021), suspect or defendant.

ii. **Storing funds in "Anonymous Saving Passbook Accounts":** Banking regulations provide the possibility for customers to store their funds using pseudonyms or anonymously. For example, Austria has been suspected of being one of a series of money launderers in Europe who allow individuals or organizations to open accounts at banks anonymously (Anonymous Saving Passbook Accounts).

iii. **Lack of commitment from countries to carry out eradication:** The practice of stealing money in the banking system was found to be unserious because a country considers that placing funds in a bank is very necessary for financing development.

## Analysis and Discussion:

**The Role of Banking Institutions in Preventing Money Laundering Practices:** Banks have an important role in economic activities for society and the country. Its role is to collect funds from the community and distribute them back in the form of credit to the community. The bank's income obtained from providing credit is called interest income. The activity of providing credit can be said to be the most important source of income for banks. However, if you look further, the function of banks abroad has begun to develop, where the main source of income is no longer solely interest income or what is called interest income.

Looking at the economic nature of banks, it is very clear that banks have an important strategy for the economic progress of a nation. Banks are a pillar of the trade economy, but at the same time, they are also the heart of a nation's economic life. Because the economic system can run well if it relies on banks as financial institutions that regulate the lifeblood system within the economic body itself. Therefore, all countries in the world, in advancing their economies, must always maintain their banks well, seriously improve their functions and roles and ensure that "diseases" do not arise, lest they be infected by "viruses: which undermine the existence of the banks themselves. Experience shows that the world of banking, more specifically in our country, is not free from various kinds of disturbances, namely illegal acts within the bank. That is what we call banking crime so the function and role of the bank are disrupted.

In overcoming banking crime, the role of banks is highly expected, the roles are:

i. **Obligation to convey identity:** Article 17 UUPU Paragraph (1, 2) (Dhaneswara, 2020), says:

a. Every person is obliged to convey their complete and correct identity to the bank.
b. Financial service providers must ensure customers act for themselves or others.

If the customer acts for someone else, the financial institution is required to provide a form to fill out and is also required to request supporting documents from the other party. However, some foreign banks are not required to provide identity to the bank, because the sender of the illegal funds wants it to launder money.

ii. **Account and Transaction Monitoring:** Each bank is required to check documents within at least five years after the customer closes an account with the bank. It is also mandatory to update the data if there are changes to the documents. as intended in the meaning of law no. 8 of 1997 concerning company documents. The documents in question are documents required for implementing Know Your Customer principles.

Article 9 mandates that banks must possess a system capable of identifying, analyzing, monitoring, and reporting on customer transactions effectively. This system is crucial for banks to track any transactions prohibited by law. Each bank is required to maintain a customer profile, which includes information regarding

i. Occupation or business field
ii. Total income
iii. Other accounts owned
iv. Normal transaction activity
v. Purpose of account bookkeeping.

**General Study of Islamic Law Regarding Money Laundering:** In the realm of Islamic law, the problem of Money Laundering crime can be categorized into *Jinayat fiqh*. *Jinayat* in legal terms is often referred to as an offense or criminal act. Etymologically, *Jinayah* is a verbal noun (*mashdar*) form of the word *jana* which means committing a sin or making a mistake, while *jinayah* means committing a sin or wrongdoing (Al Agha, 2007). In terms of terminology, the word *jinayat* has several meanings, as stated by Abd al Qodir Awdah that *jinayat* is an act that is prohibited by sharia, whether the act concerns life, property or anything else.

Before discussing how Islamic law, especially *Jinayat fiqh*, views the crime of money laundering, you must first know the division of criminal acts (jarimah) in Islamic law. The various types of criminal acts (*Jarimah*) in Islam, seen from the severity of the punishment, are divided into three, namely *hudud*, *qishosh diyat* and *ta'zir*.

i. **Jarimah Hudud:** This act breaks the law and carries a punishment called *hudud*, determined by the law's text. Hudud punishment is fixed and cannot be altered by the victim, their guardian, or community representatives. Scholars identify seven types of crimes under hudud: adultery, false accusations of adultery, theft, robbery, drinking alcohol, and apostasy (Amal, 2021).

ii. **Jarimah Qishosh Diyat:** This act is subject to *qisas* and *diyat* punishments. Unlike *hudud*, *qisas* and *diyat* punishments have defined limits, determined by the rights of the individual (the victim and their guardian), rather than being solely God's right. There are possibilities for adjusting *qisas* punishments to *diyat*, and forgiveness can also apply to *diyat* punishments. Crimes falling under the category of *qisas* and *diyat* include intentional killing, semi-intentional killing, wrongful killing, intentional abuse, and wrongful abuse (Irfan, 2022).

iii. ***Jarimah Ta'zir*:** The types of sanctions are fully based on the authority of the authorities for the sake of realizing the benefit of the people. In this case, the moral element is the most important consideration. For example, violations of the environment, traffic and other traffic violations (Djasuli, 2023). In determining the *ta'zir radius*, the main principle that is used as a reference for the authorities is to safeguard the public interest and protect every member of society from evil (danger). Apart from that, the enforcement of *ta'zir jarimah* must follow *syar'i* (*nas*) principles.

Based on the explanation above, we can say that crimes falling under *hudud* and *qisas/diyat* have specific limitations set by texts like the Qur'an and hadith. These offences also have certain conditions attached to them. Therefore, Money Laundering, a crime causing significant harm, could be categorized under *ta'zir* punishment, which is determined by authorities. *Ta'zir* punishment is applied alongside *hudud* and *qisas/diyat*, but its implementation, prohibition type, and punishment are decided by authorities rather than by religious texts

The punishment for TPPU convicts is completely left to the judge according to the severity of the crime and the condition of the convict, because there are many *ta'zir* sentences, starting from the lightest punishment to the heaviest. Specifically regarding the application of the death penalty in the *ta'zir radius*, basically, according to Islamic sharia, the *ta'zir* punishment is to provide teaching (*ta'dib*) and not to destroy. Therefore, in *ta'zir* law, there is no cutting off of limbs or taking of life. However, some *foqoha'* provide exceptions to this general rule, namely the ability to impose the death penalty if the public interest so requires it, or if eradication cannot be carried out except by killing them, such as spies, slanderers, and dangerous recidivists. However, according to some other jurists, in *Jarimah Ta'zir* there is no death penalty.

Money Laundering is in the realm of *Jinayat Fiqh*, but this crime can be included in the act of façade. Allah SWT hates façades, and this is clear in the verses of the Qur'an. The word facade and its derivations are repeated 47 times in the Qur'an, and 83 times in the hadith contained in the hadith books. Facade contains a broad meaning, namely: exploitation, wrongdoing, anarchy, and injustice in its various forms, waste, moral deviation, ugliness, crime, depravity, dishonesty, bribery, and all forms of deviation from the truth. Money Laundering is a crime that is preceded by other crimes. Of the crimes that preceded Money Laundering, there are several that are categorized as *jarimah hudud*, namely acts that violate the law whose type and threat of punishment are determined by the text, had punishment (Allah's right).

The *hudud* punishment in question does not have a lower or higher limit and cannot be removed by the individual victim or their guardian or the representative community (*ullil amri*). It is, for example, theft for which the type of punishment has been determined by the text. So theft and money laundering are both a separate finger.

**Conclusion:**

The responsibility of banking institutions in thwarting money laundering involves several obligations outlined in Article 17 of the UUPU. This article requires individuals to provide their accurate and full identity details to banks. Financial service providers must verify whether customers are acting on their behalf or for others, which involves monitoring accounts and transactions. Additionally, banks are mandated to maintain a comprehensive customer profile, including details such as employment status, income amount, other account holdings, typical transaction patterns, and the purpose of account usage.

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