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KAMPALA INTERNATIONAL UNIVERSITY LAW JOURNAL is the official journal of the School of Law, Kampala International University. It is a peer-reviewed journal providing distinctive and insightful analysis of legal concepts, operation of legal institutions and relationships between law and other concepts. It is guided in the true academic spirit of objectivity and critical investigation of topical and contemporary issues resulting from the interface between law and society. The result is a high-quality account of in-depth assessment of the strengths and weaknesses of particular legal regimes with the view to introducing reforms. In furtherance of the requirements of advanced academic scholarship, the Journal places high premium on originality and contribution to knowledge, plain and conventional language, and full acknowledgment of sources of information among other things. It is superintended by a Board of respected academics, lawyers, and other legal professionals.

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Kampala International University Law Journal (KIULJ) is the official Journal of the School of Law, Kampala International University, Uganda. It is a peer-reviewed Journal providing an objective and industry focused analysis of national and international legal, policy and ethical issues. The Journal publishes well researched articles that are in sync with sound academic interrogation and professional experience on topical, legal, business, financial, investment, economic and policy issues and other sectors.

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The primary objective of the **KAMPALA INTERNATIONAL UNIVERSITY LAW JOURNAL (KIULJ)** is to provide a platform for a robust intellectual discourse, through the publication of incisive and insightful articles and other contributions from a variety of scholars, jurists and practitioners across jurisdictions. The desire to accomplish this objective guides the choice of the materials being presented to the reading public in every edition. The peer review and editing processes of the papers that are finally selected for publication are equally influenced largely by the pursuit of this goal.

To this end, articles from seasoned scholars and practitioners in each edition address a wide spectrum of issues from different branches of the law, such as, International Criminal Law, Law of International Institutions, Environmental Law, Human Rights Law, Medical Law, Oil and Gas Law, Constitutional Law, Corporate Governance to mention but a few. You will, no doubt, find these scholarly works a worthy contribution to knowledge in their respective fields.

On behalf of the Editorial Board, I wish to appreciate all our reviewers, internal and external, for their constructive criticisms, comments and suggestions. These go a long way to enrich the quality of the papers published in this Journal. The various contributors who painstakingly addressed the observations and suggestions of the reviewers, thus facilitating the achievement of the purpose of the review process also deserve our commendation.

We also, with a grateful heart, acknowledge the interest our teeming readers have continued to show in the succeeding editions of the journal just as we assure them of our readiness to give them the best always. We equally thank our editorial consultants for their useful advice and comments that have contributed to the continuous improvement of the quality of the journal. Legal practitioners and scholars are hereby informed that contributions to our journal are received on a rolling basis. They should feel free to send in their manuscripts and ensure they comply with the submission guidelines as spelt out in the Call for Papers obtainable from the journal's website (www.kiulj.kiu.ac.ug). All contributions should be addressed to the Editor-in-Chief and forwarded to the email addresses supplied in this edition.

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ANTI-MONEY LAUNDERING (AML) LEGAL FRAMEWORK: THE SHARIA PERSPECTIVES

MARUF ADENIYI NASIR*

Abstract

The multifaceted challenges posed by the phenomenon of money laundering and other related predicate offences remain a major threat to global economic development and the havoc created by its menace to the growth, safety and economic development globally is enormous and unquantifiable in terms of actual estimate. It remains a phenomenon that constitutes threat to every fabric of human endeavour and as such, a complex global problem where launderers continue to perfect methods of cross- border movements of their proceeds of crime with very destructive tendencies, so much that it has grown to become a serious threat to the workings of a normal society. Ironically it has continued to increase unabated. Of great importance, however is the terrorist attack on the United States of America on September 11, 2001. This event has contributed immensely to the re-awakening of global concern on money laundering and terrorism financing. While the event has gingered a lot of reactions that led to the development and the growth of AML legislation regime, the great concern is that it has equally created a sort of apathy for Islamic finance which is currently fuelling perception of a systemic biasness, bred hatred and prejudice against anything Islamic. Islamic charity funds, waqf and other related endowment now labelled to be more vulnerable to laundering and serve as veritable tool for terrorism financing. This attitude, no doubt, gives the impression that Islamic Finance which is grounded in Sharia is sharply against principles of AML legal framework. This paper therefore, is intended to examine the Sharia perspectives of AML concept. A careful study and analysis of AML in the context of sharia stunningly reveals that such opinion is unfounded. The scope of money laundering prohibition is broader under sharia and anything contrary lacks empirical proof.

Keywords: Money Laundering, Sharia, and Legal Frameworks

Introduction

The term money laundering is a new coinage terminology that emerged in the 1980s on the international level first at the United Nation Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substance (Vienna Convention), as part of the arsenal that is targeted against illicit trafficking in drugs. It has however, been frequently used to refers to not only an organisedcrime but to proceeds that is accrued from any form of crimes. This characteristic therefore transformed it to be a phenomenon that is as old as the history of crime itself. It is a crime concept that has

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created more problems to financial stability and serves as catalyst to several other predicate offences.

The damages that money laundering has done to global economy and development is enormous and remains unquantifiable. It is very difficult to give any specific figures on the actual loss created by this menace. However, as early as 1990, the Financial Action Task Force (FATF)¹ estimated that as much as US\$85 billion could be available for laundering and other investments from the proceeds of illicit drug trafficking in United States and other Europe.² Much later, it is estimated by the international Monetary fund to be within US\$590 billion to US\$1.5 trillion which is said to be within 2% to 5% of the world Global Domestic Production (GDP). The 2015 report put the laundered money to be within US\$800 billion to US\$ 2trillion.³

The emerging economies and the developing countries are equally not spared and perhaps more hit as it makes economy growth in those countries to be more difficult with a loss of about US\$7.8 trillion as illicit outflow from 2004 and 2013 only.⁴ This is according to Global Financial Integrity (GFI) report in December 2015. In that report, Malaysia was estimated to loss US\$418 billion while Nigeria's lost was estimated to be US\$178 (N3.5trillion) and South Africa lost estimated to be US\$209.⁵

The pertinent questions that would readily come to mind are as follows; 'What is this money laundering that have so much destructive tendencies?' Is it a method or a process of crime? What makes it to be so potent? And could it have been addressed by Sharia as being recently done with common law approach? Attempts to proffer solutions to these questions formed the nucleus of this paper.

Conceptual Clarifications

Money laundering is a systematic process of coffering legitimacy on illegitimate proceeds of crime by disguising the illegal origin to prevent and protect the identity of the perpetrator of the crime to avoid detection of the crime. In the word of Reuter and Truman, money laundering is the conversion of criminal incomes into assets that cannot be traced back to the underlying crimes.⁶

¹ The FATF is an inter-governmental body which sets standards, and develops and promotes policies to combat money laundering and terrorist financing. It currently has 33 members: 31 countries and governments and two international organisations; and more than 20 observers: five FATF-style regional bodies and more than 15 other international organisations or bodies. A list of all members and observers can be found on the FATF website at http://www.fatf-gafi.org/Members_en.htm. Financial Action Task Force, "The Forty Recommendations," 2003. see also Financial Action Task Force, "Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations," Paris, www.Fatf-Gafi.Org, 2004.

² Michael Ashe and Paula Reid, *Money Laundering: Risks and Liabilities* (Round Hall Press, 2000). See also William C Gilmore, "International Efforts to Combat Money Laundering*," *Commonwealth Law Bulletin* 18, no. 3 (1992): 1129-42.

³ How much money is laundered per year? Accessed at <http://www.fatf-gafi.org/faq/moneylaundering/>

⁴ <http://www.gfintegrity.org/report/illicit-financial-flows-from-developing-countries-2004-2013/>

⁵ 'Illicit Financial Outflows from the Top Ten Source Economies' at <http://www.gfintegrity.org/>

⁶ Peter Reuter, *Chasing Dirty Money: The Fight against Money Laundering* (Peterson Institute, 2004).

To achieve these objectives, money laundering is based on four identifiable factors, these are;

- i.) Concealing the identity of ownership and source of the money;
- ii.) Alteration of the form of the proceeds of crime;
- iii.) Covering the tracks (disguising) to avoid traces of the trail;
- iv.) Absolute control of the money.⁷

Money laundering complete circle involves a three stages process which are, placement, layering and integration stages. The placement stage is the stage where the illegal fund is deposited in banks or other financial institutions, it could also mean when the money is used to acquire assets or property or other business investment. The possibility of detecting laundered money is very much high at this stage. Layering stage is the stage of disguising, illicit funds are divided pay and transfer into several accounts of protégés, fronts and corporates entities or nominees. This is to give it a resemblance of legitimate transactions and using cobwebs of transaction to create a complex situation that make trail to become difficult. This process is mostly facilitated by several accounts that are used to set up multiple transactions to achieve the end result of confusing the audit trail that will enable it to be separated from its criminal origins. Often offshores financial institutions, trusts and the use of companies along with other form of investments.⁸

Integration stage is the last stage in which the illicit or the said proceed of crimes will be transformed by returning to the legitimate system having been ‘thoroughly cleaned’. This usually involved a sort of complex transfer that now end up as legitimate investment when distinguishing it becomes extremely difficult. The essence of all the three stages is to disguise, confuse and obscure to make it extremely difficult to trail and trace the illicit fund to the perpetrator of the crime.

A deducible fact that can be inferred from all these definitions is that, it can be concluded that concealing or disguising the illegal source of proceeds of crime in such a manner that would make the said proceed tainted with legitimacy remains the kernel of money laundering as captured by the international and local instruments.

Tackling and combating money laundering has however attracted international concern⁹ due to its negative effects and as outcome of Vienna conference¹⁰ OECD¹¹

⁷Ashe and Reid, *Money Laundering: Risks and Liabilities*.

⁸Ibid.

⁹The issue of money laundering was specifically addressed under Article 3(b) I & ii of the United Nation Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance adopted in Vienna by the conference at its 6th plenary meeting on 19th December 1988. See Doc E/CONF.82/15 Corr.2(Dec 1988). Source: UN conference for the adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Official Record, Vol.1.

¹⁰ Ibid

countries facilitated the establishment of FATF and the organisation has been saddled with the responsibilities of formulating policies and regulatory framework which have so far been accepted as standard with money laundering legislations and regulations across the world are measured. It should be noted however that the centre piece of the FATF AML (anti-money laundering) system is identification and verification of the identity of beneficial owners (including corporations, foundations, and trusts).

The entire world is now determined more than ever to combat money laundering and any country that is seeing not to be moving in the expected pace is blacklisted by FATF due to the perceived danger and destructive potency of money laundering and its predicates crime. The potency of this menace will be better understood if mind is averted to the fact that money remains the life blood of most of the crimes and the multiplier effect that the kind of magnitude of illicit fund that is reported to be in the hands of criminals is better imaging.¹²

For instance, in Malaysia, between 2011 and 2012, the total amount investigated for serious crimes by law enforcement authorities stood at RM13.1 billion.¹³ The actual size might be bigger since not all crimes had been reported, let alone investigated.¹⁴

The table below shows the illicit financial outflow of the top ten countries;

¹¹¹¹ Financial Action Task Force on Money Laundering (FATF) is an organ set up to address money laundering issues in 1989 under the auspices of Organisation for Economic Cooperation and Development (OECD). It is based in Paris, France. It was originally formed by G7 summit at France, for developing anti-money laundering legislations and regulations. See Abbas Hardani and Guru Dhillon, An Overview of Financial Action Task Force, (2011)1 QLR, (Quarterly Law Review).

¹²Adegboyega A. Ige, "A Review of the Legislative and Institutional Frameworks for Combating Money Laundering in Nigeria," *NIALS Journal on Criminal Law and Justice Vol. 1 2011*, 2011, <http://www.nials-nigeria.org/journals>, citing Sterling Seagrave: "Lord of the Rims", as cited in A brief history of money laundering /*silkscreenconsulting*. Available at www.coutermoneylaundering.com.

¹³ Abu Hassan Alshari Yahaya (Assistant Governor)'s Keynote Address at the Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) Compliance Conference 2014 (17th September 2014)

¹⁴Toby Graham, Evan Bell, and Nicholas Elliott, *Butterworths Compliance Series: Money Laundering* (Butterworths, 2003).

Illicit Financial Flows from Developing Countries 2004-2013

R a n k	Countr y	20 04	2005	2006	2007	2008	2009	2010	2011	2012	2013	cu mul ativ e	Ave rag e
1	China	81,517	82,5137	88381	107435	104,980	138864	172367	133788	223,767	258,640	1,392276	139,228
2	Russia	46,064	53,322	66,333	81,237	107756	125062	136622	183501	129,545	120,331	104,9772	104,977
3	Mexico	34,239	35352	40421	46,443	51,505	38,438	67,450	63,299	73,709	77,583	528439	52,844
4	India	19,447	20253	27791	34513	47221	29247	70337	85584	92879	83014	510286	51029
5	Malaysia	26591	35255	36554	36525	40779	34416	62154	50211	47804	48251	418512	41854
6	Brazil	15,741	17,171	10,599	16,430	21,926	22,061	30,770	31,057	32,727	28,185	226,667	22,667
7	South Africa	12,137	13,599	12,864	27,292	22,539	29,589	24,613	23,028	26,138	17,421	209,219	20,922
8	Thailand	7,113	11,920	11,429	10,348	20,486	14,687	24,100	27,442	31,271	32,971	191,768	19,177
9	Indonesia	18,466	13,290	15,995	18,3354	27,237	20,547	14,646	18,292	19,248	14,633	180,710	18,071
10	Nigeria	1,680	17,867	19,160	19,335	24,192	26,377	119,376	18,321	4,998	26,735	178,041	17,804
Total of Top 10		262,994	300,565	329,526	397,912	468,623	479,289	622,435	634,524	682,086	707,765	4,885718	488,572
Top 10 as percentage of Total		56.6%	57.3%	60.6%	56.9%	56.6%	64.2%	68.7%	63.0%	65.8%	64.9%	62.3%	
Developing World Total		465,269	524,588	543,524	699,145	827,959	747,026	906,631	1,007,744	103,590	109,0130	784,7921	784,792

Source: Global Financial Integrity, Illicit Financial Flows from Developing Countries: 2004-2013. (2015 Reports)

The Global Response

Money Laundering is a phrase of recent origin that has become a global phenomenon whose historical origin is a product of a coinage by the law

enforcement agencies in the United States of America.¹⁵ However, measures to combat money laundering globally were product of international action against drug barons whose illicit transactions had generated a huge amount of profit. The proper foundation for the current anti-money laundering legislations and other measures globally could therefore be traced to a period within 1988 to 1991.¹⁶ Measures to combat therefore evolved through various conventions and intervention of other international oriented organisations such as Basle committee¹⁷, Wolfsberg Principles¹⁸ and Council of European Union.¹⁹

From the foregoing, it is evidently clear that the current money laundering legislations evolves from common and civil law jurisdictions and when this one is combine with the phobia that United States of America has been reported to have for Islam which is presently corroborated with the ban on 7 Muslims countries from America, the perception that Islamic principles did not accommodate measures against money laundering will have to be thoroughly examined rather than taking it hook and sinker. More so, The United states through its secretary of states has once made a statement that do not only indicts Muslim countries but equally suggest that by their religious belief they are prone to be lax in implementing AML measures. He said

Some terrorist groups may also use Islamic Banks to move funds. Islamic Banks operates within Islamic Law, which prohibit the payment of interest and certain activities. They are proliferated throughout Africa, Asia and Middle East since the mid-1970s. Some of the largest Islamic Financial institutions now operate investment houses in Europe and elsewhere. Many of these banks are not subject to a wide range of anti-money laundering regulations and controls normally imposed on secular commercial banks nor do they undergo the regulatory or supervisory scrutiny by bank regulators via periodic bank examinations or inspections. While these banks may voluntarily comply with banking regulations, and in particular, anti-money laundering guidelines, there is often no control mechanism to assure compliance or the implementation of updated anti-money laundering policies.²⁰

¹⁵Brent Fisse, David Fraser, and Graeme Coss, *The Money Trail: Confiscation of Proceeds of Crime, Money Laundering and Cash Transaction Reporting* (Law Book Company, 1992).

¹⁶Robin Booth, *Money Laundering Law and Regulation: A Practical Guide* (Oxford University Press, 2011) Pg.4.

¹⁷The committee was set up with members drawn from Central Banks and other financial regulatory bodies that cut across several European countries which included, France, Italy, Belgium, Canada, Germany, Japan, Sweden, Luxembourg, Switzerland and United Kingdom with representatives from United States of America. The constitution of the committee was a resultant effect of the collapse of BCCI in 1988 which reveals the fact that financial institutions are vulnerable to be misused by criminals. See Graham, Bell, and Elliott, *Butterworths Compliance Series: Money Laundering*.

¹⁸This is principles that have a general overview on money laundering. It was a product of 13 International banks and transparency international, a non-governmental civil society group. that was adopted in October 2000 at Wolfsberg in Switzerland. Wolfsberg (AML) Principles was named after the city where it was adopted and it is a coinage (or an acronyms) of 'Global Anti-Money Laundering Guidelines for Private Banking'.

¹⁹²⁰ International Narcotics Control Strategy Report, Bureau for International Narcotics and Law Enforcement Affairs, State

The above statements depict the likelihood view of many people who had not have cause to consider the Sharia principles. Many people might equally holds such view partly because unlike conventional financial institutions, Islamic Finances and Sharia that guides it has not been subjected to research, studies and reviews to detect the vulnerability or otherwise of Islamic finance products as done in conventional ways. As at now there are several publications, findings and report that available on convention institutions. It is therefore necessary to examine Sharia perspectives of money laundering for proper understanding and to have the right perception of its position with regards to money laundering.

The Meaning of Shariah

In a simple definition, sharia has been defined as Islamic law. However, this is not entirely accurate. This is because Sharia can be viewed in two perspectives which are its technical meaning and in the Islamic jurisprudential perspective. As such, Sharia could be view technically from its lexical meaning such the fact that Sharia originated from the root word ‘Sari’ ah’ which means ‘path to be followed’ or ‘path to the water hole’²¹. This is a metaphorical demonstration of the importance of water to life. It is therefore the regulations guiding the Muslims way of life.

Secondly, meaning of Sharia, within the confine of Islamic jurisprudence can be said to be partly evolves from the provision of the Quran 45:18 as follows;

Finally, we have set thee on a way (Sharia) by which the purpose of faith may be fulfilled. So, follow not the likes and dislikes of those who do not know the truth

This perspective was succinctly presented by Ruxton (1916) as follows;

*In Islam, there is but one law, and it is the religious law, signified in the word Sharia. In other words, it is the only supreme law; for it emanates from God, who decreed its main bases in the Koran, with Muhammadans the law is also, dogma.*²²

However, Sharia has been defined by many scholars. The definition given by some of these scholars is as follows;

According to Mohammad Akram Laldin, shariah is;

*The sum total of Islamic teaching and system, which was revealed to the Prophet Muhammad recorded in the Quran as well as deducible from the Prophet divinely guided lifestyle called the Sunnah*²³

While Sayed H.A M defined sharia to mean; “The path established by Allah (SWT) for men to follow in order to succeed in all aspects of worldly and spiritual life. It is

²¹Kamali, M.H “Sharia Law, an Introduction. Oneworld Publication” (Oxford, 2008).

²²M A Ambali, “The Practice of Muslim Family Law in Nigeria,” 1998.

²³Mohammad Akram Laldin, *Introduction to Shariah and Islamic Jurisprudence* (CERT Publications, 2011).

path that ensures success in his world and salvation in the hereafter”.²⁴ M H Kamali in his own definition submits that sharia; “Refers to commands, prohibitions, guidance and principles that God has addressed to mankind pertaining to their conduct in this world and salvation in the next”.²⁵

Sharia therefore constitutes the Islamic Code of Conduct. It is a terminology that sums up everything about Islam which was defined technically to mean the cannon of Islam.²⁶ It is a single term that may connote summation of two broad concepts of the ‘*Ibadat* (Worship) and *Mu’amalat*(transactions).²⁷ While ‘*ibadat* relates to religious and spiritual aspects of the Muslim’s life, *Mu’amalat* covers the mundane life.²⁸

The concept of sharia was further classified into eight (8) by Sayed H.A.M (2001). The other 7 (seven) can however still be technically sum up to be part of those aspects of human’s mundane life. The 8 (eight) classification as classified by Sayed H.A.M is as follow;

1. *Ibadah* (worship) which embraces *Tauhid* (science of unity of God), Salat (Islamic ritual prayers), *Saum* (fasting), Zakat (poor rate) and hajj (pilgrimage)
2. *Al-Ahwal al –Shakhsiyyah* (personal law) which comprises the law of marriage, divorce, custody of children, determination of paternity of children, guardianship of children, succession, bequest, will, endowment and disputes arising out of gift.
3. *Mu’amalat*(law of transaction) which covers definition of property title, possession, contract, sales, hiring, pledge, trust, mortgage, partnership, pre-emption etc.
4. *Ahkam Sultaniyyah* (Sovereignty) which covers the duties of the leaders of the community, the responsibilities of the citizens, rule of law, citizenship, human rights and law relating to public administration.
5. International Law, diplomacy, treaties and arbitration.
6. *Akhlaq*: Morals including duties, which a person owes himself, members of his family, neighbours, animals and other creatures.
7. *Al-Adab* (Ethics) and the *al-Qada*: Judicial administration and procedure governing appointment of judges, their discipline and procedures in court.
8. *Uqubat*: This is the Islamic criminal law which deals with crimes....and their punishments.²⁹

²⁴ Sayed H.A. Malik, *Sharia A Legal System and A Way of Life*,” Perspectives in Islamic Law and Jurisprudence” (NAMLAS) 2001.

²⁵ Ibid.

²⁶ Laldin, *Islamic Law: An Introduction*, (International Islamic University Malaysia, 2006).

²⁷ Abdul Karim Aldohni, *The Legal and Regulatory Aspects of Islamic Banking: A Comparative Look at the United Kingdom and Malaysia* (Routledge, 2011).

²⁸ This covers relationship between human beings (man and man) and between human beings and other creatures

²⁹ Sayed H.A. Malik, *Sharia A Legal System and A Way of Life*,” Perspectives in Islamic Law and Jurisprudence” (NAMLAS) 2001.

Sharia could therefore be defined simply as all acts and omissions that regulate Islamic practices. It is instructive to note however that basically, the religious observance which formed the first aspect of Sharia is not a subject that could be modified in any form. It does not give room for amendment or variation, whereas the part that is referred to as '*Muamalat*' is elastic in nature and could therefore be subjected to modifications within the conferment of Islamic rules of permissibility.³⁰

The sources of Sharia are generally divisible into two, the primary and the secondary. While *Quran* and the *Sunnah* are the primary sources, the Quran takes priority as the major and chief sources, while the Sunnah corroborates, explains and complement the provisions of the Quran without contradiction.

Money Laundering in the Sharia View

The term money laundering is not specifically mentioned in any of the primary sources of the Sharia. This is perhaps because of the contemporary nature of the term. However, the implication of each component of money laundering is well clarified in Sharia. It is understood that all elements³¹ of money laundering are prohibited stronger and wider terms in the Quran and the Sunnah, respectively in several years before the concept of money laundering surfaced in 1988 at Vienna Convention.³² Essentially therefore, the term "money laundering" may although not expressly mentioned in the sources of the Sharia, the dynamism of Islamic law makes it possible for any such emerging contemporary issues to be addressed by deducing principles of law from the general provisions of the Quran and Sunnah.³³ To this end, the conception of the money laundering in Islamic law can be easily explained through analysis of the views of the Sharia on each of the elements of money laundering as highlighted in the FATF recommendations as well as money laundering laws in Nigeria.

General Sharia Perspectives

In line with the FATF standard, Nigeria, current legislation on money laundering is the Money Laundering (Prohibition) Act 2011 as amended in 2012. Section 15 of the 'Act' (aligned with the global approach on money laundering and FATF recommendations), gives a broader definition of money. It succinctly specifies those things that constituted money laundering offences. Items that are considered prohibited under the 'Act' include; illicit traffic in narcotic drugs and psychotropic

³⁰ This is the principle called *hukmtaklifi*. For a study on this, see Abdullahi Saliu Ishola and Issa Olawale Solahudeen, "Dynamicism of Islamic Law: *Al-Hukm At-Taklifi* in Perspective", *NATAIS Kwara Journal of Islamic Studies* (2016)

³¹ Money Laundering has components such as criminal breach of trust, conversion, stealing, bribery, fraud, corruption, illicit drug trafficking and others that are equally un- Islamic.

³² This is when the international community sat to deal with the situation decisively and the entire 40 recommendations contained in the financial Action Task Force (FATF) as drawn in 1990 and its subsequent addition of 9 in 2004.

³³ This achieved through *ijtihad* or *istinbat* which is a tool/principle under Islamic law where contemporary issues are deduced or inferred from the general provision of Sharia.

substances; participation in an organized criminal group and racketeering, terrorism; terrorist financing; trafficking in human beings; smuggling; tax evasion; sexual exploitation; illicit arms; trafficking in stolen money; bribery and corruption; counterfeiting currency; counterfeiting and piracy of products; environmental crimes; murder; grievous bodily injury; kidnapping; illegal restraints; and hostage taking; robbery or theft; smuggling; extortion, forgery, piracy, insider trading and market manipulation.

All these crimes that are mentioned under the 'Act' are also prohibited in the Sharia because similar provisions prohibiting them can also be found in the sources of the Sharia in a stronger term. They are either directly or indirectly prohibited in the Quran and the Sunnah.³⁴ The Quran and Sunnah are strongly against any unjust activities. The two primary sources of sharia emphasized the doing of good deeds and rejecting the evil deeds which money laundering symbolises. In prohibiting, what is wrong (unlawful) and commanding the good (lawful acts), the Quran states that;

*Let there arise out of you a band of people inviting to all that is good, enjoining what is right and forbidden what is wrong, they are the one to attain felicity*³⁵

The Quran in Chapter 2 also prohibits all forms of unlawful acts such as deceit, robbery, stealing and bribery especially when it concerns the administration of justice. It states:

And eat up not one another's property unjustly (in any illegal way e.g. stealing, robbing, deceiving, etc.), nor give bribery to the rulers (judges before presenting your cases) that you may knowingly eat up a part of the property of others sinfully.³⁶

Moreover, while Quran Chapter 4, sanctions lawful business and all forms of lawful transactions such as banking and trading. It strongly prohibits in a clear terms usurpation, unlawful enrichment, proceeds of crime and other forms of dubious acts which include cheating, forceful conversion or acquisition of others people's properties. The Quran provide thus;

O you who believe! Eat not up your property among yourselves unjustly except it is a trade amongst you, by mutual consent. And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you.³⁷

³⁴Section 15 (1) (a) of The "Money Laundering (Prohibition) Act, 2011."

³⁵ Q3:104.

³⁶ Quran 2:188

³⁷ Quran4:29

In further condemnation of evil acts, the Quran Provides thus;

*Verily, Allah enjoins justice and doings of good to others, and given the kindred; forbids indecency, manifest evil; and wrongful transgression. He admonishes you that you may heed.*³⁸

Money laundering is generally regarded as ‘dirty money’ and Islam abhors impurities in all its ramifications. Allah allows and accepts only those things that are pure. The Quran is categorical on this. An understanding of a relevant verse of the Quran on the issue was advanced in the explanations provided by the Prophet as narrated in hadith. Accordingly, Abu Huraira reported that the Messenger of Allah, peace and blessings be upon him, said:

O people, Allah is pure and He accepts only what is pure. Verily, Allah has commanded the believers as He commanded His Messengers. Allah said: O Messengers, eat from good things and act righteously, for I know what you do (Q23:51). And Allah said: O you, who believe, eat from good things We have provided for you. (Q2:172)

Abu Huraira added:

*Then the Prophet mentioned a man who travelled far, becoming dishevelled and dusty and he raises his hands to the sky, saying, O Lord! O Lord!” while his food is unlawful, his drink is unlawful, his clothing is unlawful, and he is nourished by the unlawful, so how can he be answered?*³⁹

The aspiration to be nourished from proceeds of crime that is committed and other form of impurities or unlawful acts is usually the motivation for money launderers and this is contrary to the express provisions of the Quran. Proceeds of crime, therefore negates the principle of Sharia. Sharia advocates for a financial practice that is not only a product of fair and transparent transactions, but the one in which the philosophy and aim is to achieve a circulated wealth that will be for the social economic developments and well-being of the nation.

Detail analyses of the provisions of the Money Laundering (Prohibition) Act, 2011 will now be further considered to illustrate that all the acts designated as money laundering offences⁴⁰ have basis and correspondence evidential backing in Sharia principles.

³⁸ Quran 16:90

³⁹“Forty Hadith An-Nawawi in English and Arabic | Faith in Allah بالإيمان بالله,” accessed January 20, 2016, <http://abuaminaelias.com/forty-hadith-nawawi/>.

⁴⁰“Money Laundering (Prohibition) Act, 2011.” Part 2, Sections 15 to 19.

(i) Illicit activities

Under the money laundering Act, those things that are considered to constitute illicit activities are numerous, these however, includes; act of dealing in drugs or any form of intoxicant and gambling (which is referred to as *Qimar* or *Maysar*). Similarly, corruption, stealing, bribery and other related vices are equally some other examples of illicit acts. With exception of gambling, all these constituted punishable offences under section 15 of MLA. Similarly, these vices are all unlawful without any exception under sharia principles and the scope of the sharia prohibition is extended to cover gambling under Quran 5 verse 90.

Sharia declared unlawful and prohibit anything that impaired the brain or reasoning faculty of an individual which places human being above other creatures. Consequently, dealings in all forms of intoxicants such as alcoholic, narcotic drugs (such as cocaine and heroin) and other psychotropic substance are prohibited. The evil that are linked to gambling is not equally spared as they are all declared⁴¹ unlawful' as earlier mentioned. Specifically, the Quran 5:90 stated as follows;

O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.

Similarly, corruption, stealing, bribery and other related vices were prohibited in strong term in many places in the Quran. To this end, Quran 2:188 provides thus:

And eat up not one another's property unjustly (in any illegal way e.g. stealing, robbing, deceiving, etc.), nor give bribery to the rulers (judges before presenting your cases) that you may knowingly eat up a part of the property of others sinfully

Notably again, is the proceeds of crime or any form of gains derived from illicit transactions. This is not only prohibited but attract severe punishment. Judicial corruption, offering of bribe to judicial officers and other dealings that can occasion subversion of justice while determining cases that involves commercial transactions are all prohibited in the Sharia.⁴² Following this general background, specific analysis of more elements of money laundering as contained under the MLPA from Sharia perspectives would further be helpful.

(ii) Fraud, Corruption and Criminal Breach of Trust

All forms of organised crimes are prohibited and all predicate ancillary or offences attributed to it in any manner are punishable under the Sharia. Organised crime itself is referred to as "*Hirabah*" and its ingredients are wrongfully devouring the

⁴¹ Quran 5:90

⁴² Umar A. Oseni, "Dispute Management in Islamic Financial Services and Products: A Maqāṣid-Based Analysis," *Intellectual Discourse* 23 (2015).

wealth of orphans (*aklmāl al-yatīm bi al-bāṭil*), usurpation (*ghaṣb*), monopoly or hoarding (*iḥtikār*) and embezzlement of public funds (*Ghlool*).

Besides, stealing and bribery which are condemnable vices that constituted punishable offences under the Sharia as earlier mentioned, fraud, corruption and breach of trust are other elements of money laundering that are also prohibited in specific provisions of the Quran. A specific instance of this among others is *Ghlool* which means all forms of fraud and corrupt practices in terms of embezzlement of public fund.

All these forms of vices are outlawed and prohibited. In this regard, the Quran provides thus:

*It is not for any Prophet to deceive. Whoever deceives will bring his deceit with him on the Day of Resurrection. Then every soul will be paid in full what it has earned; and they will not be wronged*⁴³ Q3: 161

Trust otherwise called *Al-Amanah* under the Sharia is a concept upon which much premium is placed and is guarded with utmost priority. The Quran stated unequivocally and declares as follows: “O ye that believe! betray not the trust of Allah and the Messenger, nor misappropriate knowingly things entrusted to you”. (Q8:27) Another verse of the Quran reiterated this as follows; “Verily, Allah commands that you render back the trusts to those to whom they are due, and that when you judge between mankind you judge with justice” Q4:58

The prohibition of criminal breach of trust is not limited to the Quran, the hadith of the prophet equally corroborated this prohibition. In one of the notable hadiths, Abu Huraira reported that the prophet said;

Authority among the Bani Israel was exercised by prophets, when a prophet died he was succeeded by a prophet. I will not be succeeded by a prophet, but there will be successors after me, a large number of them. He was asked: Messenger of Allah, then what do you command us? He said: fulfil the covenant of allegiance with them one after the other, and render to them that which is due to them; and ask Allah what is due to you. Allah will call them to account in respect of that which is committed to their care.

It could therefore be said that Criminal breach of trust as a condemnable offence as specified recommended by FATF and in various money laundering legislations such as Nigeria MLA 2011 under section 15 and AMLATFA of Malaysia under section has no place under the Sharia. It has been condemned and prohibited in a clear strong term.

⁴³Pickthall, M. (2005), The Meaning of the Glorious Qura'an, Al-Aar'ff Surah, Islamic Dawah Centre International (IDCI), London, trans..

(iii) Suspicious Transaction Reporting (STR)

Under the recommendation of FATF, financial institutions must not conduct transactions that is known or that have every reason to substantially suspect that are connected with crime. Reporting of suspicious transactions (STR) is the focus of 'Section 6' of the 'MLA' in Nigeria. Under this section, reporting institutions⁴⁴ are mandated to promptly report to the competent authority whenever a transaction on any other dealings appears to be suspicious. In most cases those compliance officers that are saddled with this responsibility are usually part of the prosecution witness and they are duty bound to testify.

In a similar vein, conciliation of evil act is highly forbidden and prohibited in a stronger manner under sharia principle whenever the attainment of justice becomes an issue. The Quran provides thus;

O you who believe! Stand out firmly for justice, as witness to Allah, even as against yourselves or your parents or your kinsfolk, be(against) rich or poor. Allah is better protector to both; follow not the lusts (of your heart) so that you may act equitably. If you conceal the truth or evade it, verily Allah is ever well acquainted with what you do. Q4:135

The right to privacy is adequately guaranteed under sharia and this right accorded a high degree of importance. However as sacred as this right is held on the principle of sharia, the said right to privacy is not absolute. The Quran provided as follows:

*O you who believe! Avoid suspicion as much (as possible), **for suspicion in some cases is a sin,** and do not spy on each other, do not speak ill of each other behind their backs, would any of you like to eat the flesh of his dead brother? No! You would hate it but fear Allah, for Allah is often-returning, most Merciful.*⁴⁵

From the above verse, it is noticeable that suspicion as a matter of general principle is prohibited. But in creating an exception to the general prohibitions the verse goes further to clarify that the illegal suspicion is the one that by itself constitute a sin or crime. Thus, any act of suspicion or inclusion into privacy that is geared toward controlling a crime cannot be caught by the above verse of the Quran.

A comprehensive explanation of the above verse as relates to suspicious reporting was given in the highly-revered book of 'Tafsir AL-Quran' by Imam Qurtbi where it was further stressed that those that are in place of authority are not precluded from reporting suspicious activities within the context of their normal duties.⁴⁶ Reporting

⁴⁴ Financial Institutions and Designated -Non-Financial Institutions (DNFI)

⁴⁵ Quran 49:12

⁴⁶ Al-Imam Abu Abdulah Muhammad Bin Ahmad Al- Ansariyu Al-Qurtuby, *Al- Jami'u Al-Ahkami-L-Qur'an*, part 16, pg.416 (Al-Islamiyyah, Bayrut, Lebanon, n.d.).

suspicious transaction by compliance officer of financial institutions as a key policy of Know Your Customer of financial institutions required in money laundering legislations is therefore fully accommodated within the confined of sharia principle. This is also an acceptable norm that is regarded as one of the very few exceptions to the general principles of customer's confidentiality.

Again, concealing criminal acts is strongly prohibited under Sharia and reporting of suspicious transaction does not constitute a sin in this perspective but it is rather a strongly requirement that is grounded under the sharia principle. The Quran further provides in chapter two as follows: "Do not conceal testimony, for whoever conceals it, his heart is stained with sin, and Allah knows all that you do".⁴⁷

The Quran through this verse dismantles the dictum in the case of "*Tournier v National Provincial and Union Bank of England*"⁴⁸ where the court ruled against access to confidential financial information. The world has since moved away from the dictum in the Tournier's case as the current global position is that money laundering constituted an exception to the confidentiality of client's information.

This new approach of Anti-Money Laundering measures as earlier mentioned therefore keyed into the principles of Sharia and banking institutions irrespective of their nomenclatures, would be implementing the Sharia by complying with the reporting obligations of Anti-Money Law (AML) principles as stated in the above Quranic verses.

(iv) Scope of Prohibition in Sharia

Prohibition of money laundering offences is addressed by many clear provisions from the Quran as could be seen from the earlier discussions. The Sunnah of the Prophet also corroborated its prohibition in strong terms. A careful study and analysis of offences of money laundering that are prohibited under the sharia will reveal that scope is broader.

The Sharia principles, for example unlike the provisions of 'MLA' and AMLATFA, prohibits proceed or profit that is generated from gambling, prostitution and others. Moreover, interest (usury) is considered illegal, unlawful and prohibited. The implication of this is that laundering under Islamic jurisprudence the scope of money more-broader as it covered a lot of other things that do not constitute offence(s) under money laundering legislation as recommended by FATF.

For instance, gambling (Maysir), Interest (Ribah) and excessive uncertainty (Gharar) are declared unlawful within the confine of Sharia. Invariably, under

⁴⁷ Quran 2:83

⁴⁸ (1924)1 K.B.461(CA)

Sharia, the scope of prohibition is extended to prostitution⁴⁹ otherwise called 'paghy', gambling (*soht*) *maysiror qimār* and interest (*ribah*) which ordinarily does not constitute punishable offences in many common and civil law jurisdictions.⁵⁰

Consequently, deriving benefit from an unlawful act that is committed is a gross violation of Sharia principles. Specifically, under the principle of sharia, any act that is perceived to portend danger to the public must be avoided irrespective of the benefit that such act is contained. This position is buttressed in the Quran2: 229 as follows:

If they ask you concerning alcoholic drink and gambling say in them is a great sin, and some benefits for men but there is of them greater harm than their benefit

The provision of this Quran has been culminated into an Islamic legal maxim which states that “*greater harm should be prevented by committing a lesser injury*” (*ad-darar al-ashaddyuzal bi-d-darar al-akhaff*)

(v) Prohibition and Elimination of Harm (Darar)

In line with the objective of Sharia, one of the prophet statements adopted as legal maxim on elimination of all forms of harm is relevant. The statement is “*La Dararawa-la Dirar*” which literarily means “No harm shall be inflicted or reciprocate”. This maxim is a fusion of two words or concepts. The first part “*La Dirara*” means ‘*no harm shall be inflicted*’. This is clear evidence from the *sunnah* of the Prophet that harm must be prevented.

It is therefore mandatory for any banking institution or other financial institution irrespective of its nomenclature to prevent money laundering because of the negative effects that it has on economic of the nation and other harms which it portends. The prevention can only be done when Anti-Money Laundering (AML) legislations are implemented by all financial institutions either Conventional or Islamic. Money laundering is harm and harmful in nature and must therefore be prevented or curbed in line with the precept of sharia as contained in the aforementioned (Islamic) legal maxim.

Moreover, as an ancillary to the concept of ‘*no harm shall be inflicted*’, the Sharia principles further provides that anything which portend or constitute threat to the public deserves no protection. This was clearly emphasized in the word of the prophet (*hadith*) that “*A transgressor has no right*” (*laysa li-irqZalimhaqq*)⁵¹. This

⁴⁹Islamic law criminalizing sex trade or prostitution understood. Accordingly, Islamic law illegalizes the ill-gotten money that comes from sex trade or prostitution see Samah Al Agha, “Money Laundering from Islamic Perspective,” *Journal of Money Laundering Control* 10, no. 4 (October 23, 2007): 406–11.

⁵⁰Adel Ahmed, “Global Financial Crisis: An Islamic Finance Perspective,” *International Journal of Islamic and Middle Eastern Finance and Management* 3, no. 4 (2010): 306–20.

⁵¹ZakariyahLuqman, *Legal Maxims in Islamic Criminal Law: Theory and Applications*(BRILL, 2015)..

further corroborates other provisions against launderer that they should not be covered or given any form of protection by the banking institutions of any kind.

The other part of the maxim ‘Al-Dirar’, literally means no reciprocation. The purport of this is that an inflicted harm should not be reciprocated. Invariably the victim should not retaliate with harm or take law into his hand but rather utilise the due process of law to seek redress. Explaining this maxim, Mohamad Akram Laldin,⁵² opined that this maxim makes preventive mechanism mandatory and every person is therefore charged to put in place necessary precautionary measures to avoid harm and whenever harms occurred measure should also be taken to remove such. In line with this reasoning, the Quran 2:195 provide thus:“....*make not your own hands contribute to destruction*”.

Stemming from the fore going facts and considering the dispositions of Sharia as mentioned above, it becomes obvious that within the precinct of Maqasid Shariah, (which offers the best way and manners for human beings to organise their personal and social life,) money laundering and all other related vices that is capable of deny the society of leaving in a peaceful and orderly manner could be inferred to have been adequately taken care (by strong prohibition) in a more broader perspective several years before it becomes object of attention in the common-law world. Ascribing such to Islam would therefore be unjust, unfair and unfounded. Such perceived thoughts may therefore be as result of Islamophobia or outright hatred but does not represent the view and stand of Sharia.

CONCLUSION

Money laundering is no doubt a concept that has a multiplier negative and harmful effect on the society and to avoid the danger which it portends, Sharia has therefore, criminalizing all identifiable crimes that directly, indirectly or incidental constitutes predicate offences to money laundering. More so, the proceeds from crime and its utilization in any form are equally prohibited. To this extent, there is a synergy between money laundering legislations and the principles of Sharia. Money laundering legislation and regulatory framework is therefore in tandem with the laid down Shariah principle that have been laid down more than 1400 years ago any other view to the contrary is not likely to be justifiable

⁵²Laldin M.A, *Islamic Law: An Introduction*.(Research Centre, International Islamic University Malaysia, 2006).

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