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The role of criminal law in combating money laundering

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Abstract:

Money laundering is a major negative phenomenon that primarily aims to disguise the nature of funds obtained illegally through various criminal activities, parallel market activities, smuggling, and others, This process is carried out through numerous methods and techniques, primarily based on the banking system. Money laundering has many negative consequences, affecting all sectors, especially the economic, social, and political spheres. It impacts the distribution of national income, inflation and unemployment rates, and undermines political and social stability. Algeria, where money laundering has recently become widespread, is paying close attention to curbing this phenomenon by intensifying efforts, establishing mechanisms, enacting deterrent laws, and developing modern methods.Money is the lifeblood of the economy, which in turn fundamentally strengthens the stability of internal and external state security and is a cornerstone of the prevailing political and social systems in countries around the world. In recent years, the Iraqi legislature has been keen to protect legitimate funds from contamination by illicit funds by combating money laundering, given its impact on the national economy. This is especially true as the crime has become increasingly organized through illegal activities, organized crime, and suspicious commercial transactions between individuals, companies, and countries, particularly when these individuals possess power and wealth. Furthermore, corruption among high-ranking officials in government institutions has contributed to economic collapse, currency devaluation, and Iraq's status as one of the world's most prevalent countries .is considered most significant crimes of the century, with serious and real repercussions for both the national and global economies, it has garnered considerable attention from various official and unofficial bodies within the domestic and international communities. Due to the relative novelty of this crime in Iraqi legislation and jurisprudence, we have chosen it as the subject of our research, entitled "Criminal Liability Arising from Money Laundering: A Comparative Study."

This study aims to address the issue within a legal framework, defining its nature and elements in a way that prevents its inclusion under the definition of other crimes or its exclusion under the definition of other offenses.

Keywords: Money laundering, economic ,crimes, corruption, proceeds of crime.

Introduction:

The twentieth century, particularly its later years, witnessed tremendous developments, almost beyond human comprehension. Globalization emerged, transforming the world into a small village, especially with the rise of the communications and internet revolution. This, coupled with increased trade volume, capital flows, and the trend of most countries towards free market economics and free trade, created a fertile ground for the emergence of various new types of crime, most notably money laundering [1]. The significance of this phenomenon lies in its global prevalence as an international crime that has spread in the age of globalization. It is among the most dangerous crimes threatening global security, in addition to its devastating economic repercussions. The importance of discussing this topic stems from its direct link to illicit activities, particularly those carried out by organized crime groups. These activities have become a source of concern for various countries, organizations, and international bodies. Undoubtedly, such crimes tend to appear in weaker countries with less stringent laws and regulations. Furthermore, the importance of discussing money laundering is linked to another phenomenon: terrorism. This book clarifies the concept of money laundering, addressing its jurisprudential and legislative definitions, such as innovation and education. Legislative analysis such as creation, obfuscation, separation, integration, and consolidation [2]. It also addresses the methods used in money laundering and their legal classification. Furthermore, outlines the measures taken and being taken by countries combating this crime. Criminal law plays a pivotal role in combating money laundering by criminalizing illegal acts, imposing strict and deterrent penalties (ranging from imprisonment to fines), and confiscating the proceeds of crime. This hinders illegal economic activities and undermines the financial structures of criminal and terrorist organizations [3].

1. Criminalization and Definition of Material Acts:

Criminal law precisely defines the elements of the crime. Anyone who knowingly commits the following acts, knowing that the funds are derived from illegal activity:

• **Transfer or Conveyance, Concealment and Disguise and Use .**

2. Separateness of the Crime:

In most legal systems (such as the federal laws in force in the UAE), money laundering is considered a crime entirely separate from the original crime from which the funds were generated. Therefore, the failure to punish the perpetrator of the original crime does not preclude the prosecution and punishment of the money launderer [4].

3. Deterrent Penalties:

The law imposes severe and aggravated penalties, including:

• **Imprisonment:** Long prison sentences (such as up to 15 years in some jurisdictions) to deter dangerous criminals.

• **Hefty fines:** Imposing substantial fines commensurate with the value of the funds involved in the crime, which may be doubled if it is proven that the purpose of the money laundering was to finance criminal or terrorist activities.

• **Attempted liability:** The law punishes anyone who attempts to commit the crime, or aids, abets, facilitates, or conspires in it, with the same penalty prescribed for the principal offender.

4. Precautionary Measures and Confiscation:

• **Confiscation of funds:** The law grants the competent authorities the right to confiscate funds, property, proceeds resulting from the crime, or the tools used in its commission.

• **Strengthening national legislation:** Modern legislation, such as Iraqi law and international legislation, has contributed to strengthening the legal framework and curbing the sources of financial corruption. For details on the legal frameworks and their practical application, you can review the studies and research of the Federal Integrity Commission on the role of the Iraqi Anti-Money Laundering Law in reducing corruption, or review the legal

framework for the crime of money laundering and related academic research available in the Al-Bayan University Journal of Legal Studies and Research.

Money laundering has become an independent crime, distinct from, or at least not confused with, other traditional criminal offenses. If a crime in general consists of an attack on a legally protected interest, and criminal law is specifically concerned with defining its elements and the punishment prescribed for its perpetrator, then the matter is essentially the same with regard to the crime of money laundering. The process of laundering money obtained from corruption crimes is considered the most significant and dangerous form of corruption, because corruption crimes are fundamentally financial crimes where material gain is the true motive for committing them. Consequently, securing this material gain requires the perpetrator to quickly employ tricks and methods of concealment that enable him to legitimize the funds obtained from the crimes he committed. Money laundering is a crime that makes it more difficult to detect and track its direct proceeds. It is also one of the most dangerous economic crimes with negative repercussions on society in general and on the economy in particular [5]. This is because it is the common factor for all forms of crime and illegal activities, and the term money laundering is relatively recent, as it dates back to a recent period for the general public and many of those concerned with matters of criminal justice alike. Although the ancient Iraqi laws were among the first legal texts that indirectly addressed the subject of money laundering crimes, it is not necessarily the case that our current Iraqi legislation is the best in its formulation and content in terms of addressing this crime and limiting it. Rather, the formulation of this law may be a contributing factor to the increase in the commission of this crime. This is what we will try to clarify in this research by dividing it into two sections. We have dedicated the first section to the nature of money laundering, and the second section to the Iraqi Anti-Money Laundering Law. In conclusion, we have reached a set of conclusions and recommendations [6].

Defining the Crime of Money Laundering:

The term "money laundering" is a relatively recent term. In English, it is referred to as "Money Laundering," and it has been translated into Arabic using several terms, including "whitening money" and "cleaning money," all of which convey the same meaning [7]. However, the most accurate

translation is "money laundering." Money laundering is defined as a set of interconnected financial operations aimed at concealing the illicit source of funds and presenting them as funds obtained from a legitimate source, or contributing to the investment, concealment, or transfer of the direct or indirect proceeds of a crime or misdemeanor (1). Dr. Muhammad Muhi al-Din Awad defined money laundering as any act or attempt aimed at concealing or disguising the nature or essence of proceeds derived from illicit activities, making them appear as if they were derived from legitimate sources, thus enabling their subsequent use. What constitutes money laundering under Iraqi law, whether through legitimate activities within or outside the country?

What is the crime of money laundering under Iraqi law?

First: Transferring, moving, or exchanging funds from a person who knows or should have known that they are the proceeds of a crime, for the purpose of concealing or disguising their illicit origin, or assisting the perpetrator of the crime, the perpetrator of the original crime, or anyone who contributed to its commission, to evade responsibility for it [8].

Second: Concealing, disguising, or disguising the true nature, source, location, condition, method of disposal, transfer, ownership, or rights related to funds from a person who knows or should have known that they are the proceeds of a crime.

Third: Acquiring, possessing, or using funds from a person who knows or should have known at the time of receipt that they are the proceeds of a crime.

Stages of Money Laundering Operations:

The operations go through different stages.

The first Stage :

Placement, deposit, exchange, or substitution stage.

The second stage:

The layering stage: This stage occurs after the funds enter the banking sector, in order to separate these funds from their original illicit activities.

The third stage:

The integration stage: This is the final stage in money laundering operations and is characterized by the transparency of its activities. This is achieved by integrating these funds into the economic cycle and blending them into the macro economy, making it difficult to distinguish between wealth with a legitimate source [9].

Money Laundering Methods (13):

Traditional Methods

First: Smuggling and currency exchange.

Second: Using shell companies: Sometimes companies are established legally, but they do not actually carry out any real activities or projects.

Third: Fictitious transactions, brokerage, gambling, and the purchase of physical assets: These are used for fictitious transactions as one of the traditional methods in money laundering operations [10].

What is the crime of financing terrorism under Iraqi law?

The term "money laundering" has several names, ranging from "whitewashing" to "cleaning" or "purifying" money. Ultimately, these terms are unified in meaning and substance. However, modern jurisprudence, with its various schools of thought, has attempted to define this crime according to its elements and the nature of its legal structure [11].

Money laundering is considered an intentional crime, where the perpetrator employs methods of concealment and deception to hide the true source of their illicit funds in order to channel them into the legitimate economic cycle, which is protected by law, thus giving those funds a legitimate appearance.

Defining the legal nature of money laundering is crucial because financial and legal studies consider it a crime with negative repercussions on national economies [12]. This is due to its deliberate and artificial nature, and its harmful effects extend beyond the individual to encompass the entire society. As we know, money laundering can originate from theft, drug trafficking, bribery through public office, abuse of public office, or smuggling. However, the key element lies in the channeling of these illicit funds through smuggling [13].

Among the most important recommendations is a proposal to the Iraqi legislature to amend Article (12/Fifth A) of the Anti-Money Laundering and Counter-Terrorism Financing Law, which currently stipulates that the Bureau must be notified immediately of any transaction suspected of involving money laundering or terrorism financing, whether or not the transaction has actually taken place [14]. The proposed amendment would require the Bureau to be notified immediately of any transaction suspected of involving money laundering or terrorism financing, according to the reporting form prepared by the Bureau for this purpose [15]. Furthermore, the recommendations suggest amending Article (9/First B) of the Anti-Money Laundering and Counter-Terrorism Financing Law, which pertains to the Bureau's responsibilities. This article currently grants the Bureau the authority to analyze reports and information within a timeframe specified by the Bureau. While the Iraqi legislature has assigned the task of receiving and analyzing reports to the Bureau, it has not specified a timeframe, leaving it open-ended [16]. Therefore, specifying a timeframe would be preferable to prevent the Bureau from delaying or extending the process. Money laundering has become a serious phenomenon that has grown in the international community. Although the majority of these operations take place in major international financial centers such as New York, London, Zurich, Geneva, Paris, Hong Kong, and other international financial hubs that offer advantages for organized crime, Arab countries have not been immune to this phenomenon. Therefore, they have begun cooperating with international efforts to combat money laundering and the financing of illicit activities, and are working to implement international standards and recommendations in this regard. Many Arab countries, such as the United Arab Emirates, Bahrain, Saudi Arabia, Oman, Kuwait, Lebanon, Egypt, and Algeria, have enacted specific legislation to combat money laundering [17]. They have also established national committees, agencies, and specialized units within and outside central banks and monetary institutions, tasked with monitoring and implementing anti-money laundering policies and procedures.

Conclusions:

The greatest burden of the money laundering phenomenon falls on banks and financial institutions, as banks are the primary channel through which money launderers funnel their funds, especially given banking secrecy laws. - Although the liberalization of exchange rates has positive effects in encouraging international investment, it also has a negative impact by facilitating the transfer of laundered funds across different countries. - The phenomenon of money laundering has increased with the globalization of the economy and the opening of global financial markets, spreading to an unprecedented degree due to the free movement of capital across different countries. Recommendations: - Creating public opinion against crime in general and money laundering in particular, given the negative effects this crime has on social, economic, and political spheres in general, and on the monetary and banking sectors in particular. - The state should tighten controls and rigorously enforce laws related to trade and banking regulations, as criminal groups are working to overcome all barriers governing global trade and the movement of capital. - Governments should participate in international and regional forums and conferences to discuss ways to combat money laundering, ensuring the exchange of information and knowledge on combating these crimes. - Taking the necessary measures to investigate individuals who own institutions or companies that do not conduct business in the country where their registered office is located. - The importance of ensuring the participation of the private sector and its leaders, particularly in financial institutions, in national efforts to combat money laundering. - Strengthening oversight of funds entering banks in each country and identifying the sources of funds held in major bank accounts, especially if the amount is large and suspected of being illicit. - Economic globalization is a key factor behind the emergence and growth of economic crimes, necessitating a comprehensive approach to addressing money laundering that considers the international factors influencing the spread of such crimes. - The importance of enacting pan-Arab

legislation to combat money laundering, outlining the necessary actions through cooperation and coordination among financial, banking, legislative, and security institutions in Arab countries. - Developing bank secrecy laws to align with anti-money laundering measures and training bank, financial institution, and capital market personnel, among others, on modern methods for detecting and reporting money laundering attempts. - Benefiting from the experience of a number of international banks that are moving towards combating money laundering and working to create a mechanism for the exchange of legal, financial and monetary information .

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