

**DONATIONS FROM ILLEGAL PROPERTY AND MONEY LAUNDERING AT  
MOSQUE AN APPRAISAL**

Mohd Nor Md Deros<sup>i</sup>, Noor Haty Nor Azam<sup>ii</sup>, Hartini Abdul Jalil<sup>iii</sup> &  
Nur Filzah Abdul Razak<sup>iv</sup>

<sup>i</sup> (*Corresponding Author*). Senior Lecturer Faculty of Business & Management, Universiti Teknologi MARA Melaka. noorhaty@uitm.edu.my

<sup>ii</sup> Accounting Research Institute, Universiti Teknologi MARA Malaysia. mdnor.chyeaomm@gmail.com

<sup>iii</sup> Lecturer, Faculty Business & Accountancy, Universiti Selangor, Malaysia. hartiniabdjalil@gmail.com

<sup>iv</sup> University College of Aviation Malaysia. Filzah86@gmail.com

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<b>Abstract</b>	<p><i>Money laundering is defined as the proceeds of an illegal source with any act to conceal it so that it appears as if it has become a legal asset. Meanwhile, Donation may derive from proceed of legal and/or illegal properties which is an offence under Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) if the sadaqah from illegal properties. This study aims to evaluate the differences and similarities between them. Then, to determine the adequacy of the mosque's financial reporting standard in reporting Donations from the proceed of illegal properties in complying with AMLA requirements. The study is purely descriptive-qualitative based on library research. First, content analysis on Donations from illegal properties will be examined from article journal, statutes and cases will be scrutinized. The findings of this study will resolve the issue of defining the nature of Donations from illegal sources and money laundering. It tries to find a solution acceptable by both syariah and civil law in disposing of the Donations from illegal property/money laundering. This study will also assist religions administrator including but not limiting mosques, judges, legal practitioners, and enforcement officers in combating money laundering in our country using religious institutions to conceal illegal money.</i></p> <p>Keywords: <i>Compliance on Money Laundering, AMLATFA 2001, Financial Act, Money Laundering Cases, AML</i></p>
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## INTRODUCTION

Money laundering is defined as the proceeds of an illegal source with any act to conceal it so that it appears as if become a legal asset. The amount involved in money laundering is huge. Worldwide, criminals launder between 88 million USD and 2 trillion each year (Chris Kolmer: 2023). The Financial Action Task Force (FATF) leads global action to tackle money laundering, terrorist and proliferation financing.

However, FATF failed to include the management of mosques in combating money laundering. One may argue that mosque management can be considered a sub-set to non-governmental organisation. However, mosque management is not really under the category of non-governmental organisation. The reason is that mosque management is governed by states and the government will allocate a certain sum of its budget to religious affairs minister (official portal Parliament of Malaysia, 2024).

Money laundering on the one hand will destroy our economy because money laundering creates distrust in the financial and banking system, and government bodies causing investors will run away from investing in Malaysia due to erosion of trust. (Caroline et al, 2023).

On the other hand, it benefits the Muslim community because Islam does not prohibit the utilization of illegal property or property obtained by syariah non-compliance for the Muslim Ummah (Selangor Fatwa 1/1991).

However, without proper measures to combat money laundering and comply with international standards and norms, it becomes a weapon for foreign countries to interfere with the domestic affairs of our beloved country in the name of the war against terrorism, disregarding the sovereignty of the nation. Huntington (2016) reminded the muslim world including Malaysia about his prediction that there will be a clash of civilization between Western values and Islamic values in the future. Therefore, this study aims to evaluate the differences and similarities between Donations from illegal property and money laundering. Then, to determine the adequacy of the mosque's financial reporting standard in reporting in complying with AMLA requirements.

**LITERATURE REVIEWS**

The term 'Donations' comes from the Arabic word 'sidq', which means sincerity. The root of this word ('sidq') also means "to be sincere", "to fulfil one's promise", or "to speak the truth".The term 'Donations occur thirteen times in the Quran. (Ayoub, 2022). It is a commendable practices promoted by the religion of Islam<sup>1</sup> Technically, Donations means a gift imparted onto the poor for the sake of God or to obtain recompenses from God (Al-ahkam Al Adliyah, 2002) .

The requirement of Donations is (i) Donor (al-Mutasaddaq). It means the donated property must be owned by the donor who is mature (Baligh) and sane (aqil) (ii) Recipient (al-Mutasadaq 'alaih). However the recipient is not necessarily to be mature (Baligh) and sane (aqil) (iii) Donated Property: In principle, the property must be obtained from legal sources, i.e. legally recognized as a permissible source within the limits of Shariah (Sujiman et al, 2018).

Generally, Donations is for the poor and to seek Allah pleasure and the subject matter cannot be returned to the original owner. Unlike hibah or hadiyah, it opens to the rich and poor for the purpose of gratifying the receiver and the subject matter can be returned to the give. It is illustrated in the table below:-

Table 1 : The Difference between Donations, Hibah and Hadiyah

	Element	Donation (Sadaqah)	Hibah/Hadiyah
1.	Recipient	Poor	Rich/poor
2.	Purpose	To seek Allah's pleasure	To gratify the receiver
3.	The property	Cannot be returned to the giver	Can be returned to the giver.

Source : adopted from Mohd Hafiz Bin Mohd Dasar & Prof Dr. Md Son, 2018

Meanwhile, there are similarities between donation (sadaqah) and Waqaf and they also can be distinguished that waqaf refers to immovable property, perpetual and is managed under state Islamic council. The similarities and the differences can be summarised in the following table.

Table 2: The Difference between Donation (sadaqah) and Waqf

	Element	Donation (Sadaqah)	Waqaf
1.	Recipient	poor	poor
2.	Purpose	To seek Allah's pleasure	To seek Allah's pleasure

<sup>1</sup> See Qur'an 19:31, 2:261, 3:92, 2:254, 2:274

3.	The property	Transferable (sold or given away as a gift)	Non-transferrable
4.	Type	Movable property	Immovable property
5.	Organisation	Non-institutionalize	institutionalize

Source : adopted from Mohd Hafiz Bin Mohd Dasar & Prof Dr. Md Son, 2018

Donations behaviour can be divided into 2 divisions voluntary and involuntary action:-

- a- It is a voluntary action.  
Voluntary action can be divided into due to non-personal benefits and personal benefits. Eisenberg (1986), Bendapudi et al. (1996) pointed out Donations behaviour is for the sole purpose of benefiting others in need. Meanwhile, Brady et al. (2002) argue that Donations behaviour is given to obtain intangible rewards in return for example emotional benefit and familial benefit (Sargeant et al., 2006)
- b- It is an involuntary action.  
It refer that the Donations is given due to the obligation to satisfy unfulfilled need (Schervish, 1997) or to comply with moral conduct (Cheung & Chan, 2000)

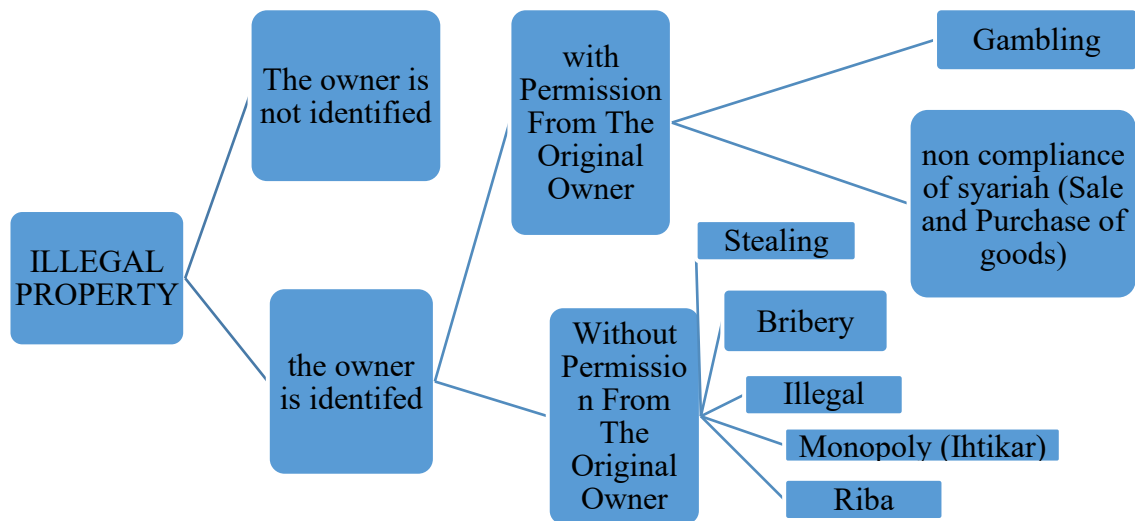
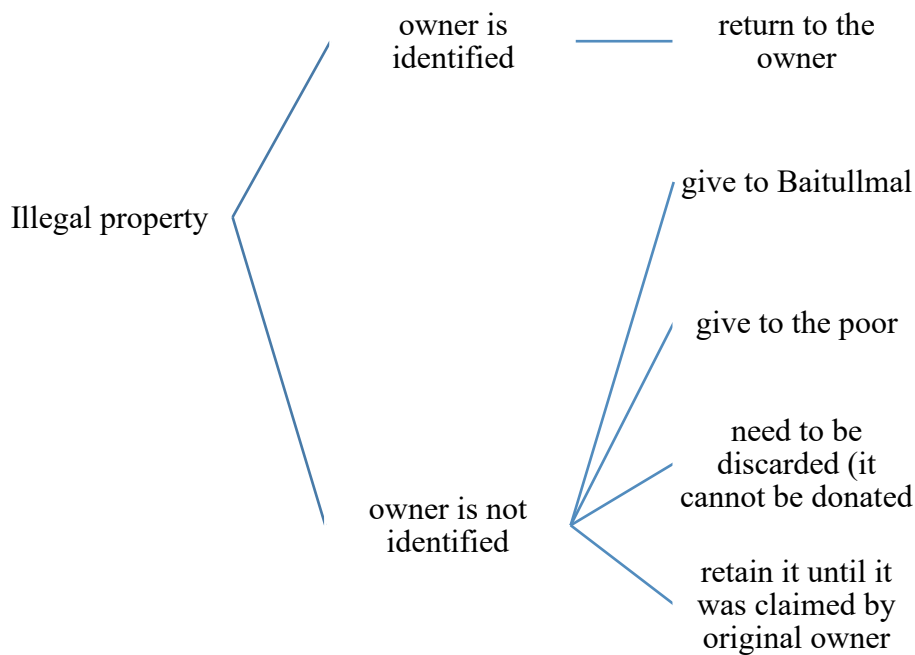


Figure 1: Types of Illegal Property (Mohd Hafiz Mohd Dasar & Md Son, 2018)

From the figure 1, above shows types of illegal property under Syariah. It can be divided into 2 parts that the owner of illegal property can be found and sometimes the owner is not traceable. If the owner is identified, it can be divided into 2 sub headings with permission and without permission. Further, the table above explains example of each classification illegal property which the owner is identified isuch as gambling, stealing, bribery, riba, monopoly etc.

Islamic jurists unanimously agreed that if the owner is identified the goods have to be returned to the owner. However, if the owner is not identified Islamic jurist divided into 4 opinions as illustrated in the figure below:-

Figure 2: Effect of Illegal Property (Mohd Hafiz Mohd Dasar & Md Son, 2018)



### Money Laundering

Money laundering means any person who engages, directly or indirectly, in a transaction that involves the proceeds of an unlawful activity or instrumentalities of an offence. In other words, the money should come from proceed of crime. However, there is no universal or comprehensive definition of money laundering.

Most of the previous research are focusing on organizations are falling under reporting institution. They have statutory obligation to report to Bank Negara Malaysia and specific acts are governing them such as Banking and Financial Institutions Act 1990 (BAFIA 1990), Money Changing Act 1998 (MCA 1998), Money Services Business Act 2011 (MSBA 2011), and the Exchange Control Act 1953 (ECA 1953).

Unlike mosques as unique entity are omitted from reporting institution are vulnerable for money laundering. Sadly to note there is no preventive measures are taken to protect the office bearer if they are victim of the organized crime to clean dirty money without their knowledge or consent.

As such, it creates uncertainty in administration of justice whereby Malaysia adopt dual system of administration of justice. Federal government manages civil law and state government manages Syariah law. It creates fuss system and incompatibility between Islamic values and civil law in interpreting money laundering and terrorist group. The lack of uniformity of mosque accounting financial reporting standard in Malaysia because of decentral system under state specifically and international level generally create a catastrophic to mosque administrator. They will be liable under offence of money laundering if their crowd funding activities cross the border. In nutshell, the donation from illegal property and money laundering have two sides of the same coints.

### METHODOLOGY

This article is a qualitative method based on content analysis techniques to obtain data. It is purely descriptive-qualitative based on library research. Bengtsson (2016) states content analysis as a methodological approach that derives conclusions and substantiates the findings based on the evaluation and examination of textual material. This article reviewed the donation from illegal property from journals followed by money laundering in the light of statutes and cases that will be scrutiny. Data derived from the above will be used to evaluate the level of compliance towards AML regimes in the mosque's financial reporting

standard. Further to determine the adequacy of the mosque's financial reporting standard in utilizing Donations from the proceed of illegal property and their compliance with AMLA requirement.

## **RESULTS AND DISCUSSIONS**

### **Differences And Similarities**

Money laundering means any person who engages, directly or indirectly, in a transaction that involves the proceeds of an unlawful activity or instrumentalities of an offence (Section 4 AMLA). The act defines unlawful activity as any activity which constitutes any serious offence or any foreign serious offence (Section 2 AMLA) Meanwhile serious offence means any of the offences specified in the Second Schedule (Section 2 AMLA).

From the above interpretation, it is revealed that the meaning of money laundering is not compatible with Islamic law. The main reason is that source of the Islamic law is divine law whereas the source of civil law is an act of parliament. Parliament may delegate its power to individuals by issuing licences making the act legal or illegal. For example, under Shariah law whatever sources derive from gambling activities whether with license or without licence are illegal property. However, under civil law, whatever sources derived from gambling which were given licence are legal source. Minister may *Gazette* that any game, method, device, scheme or competition specified or described in such notification to be a lottery (section 2 of Common Gaming Houses Act 1953). Then, the proceeds of the sources from unlicensed gambling will trigger money laundering. Whoever commits an offence under section 4, 4A, 4B section 9 of the Common Gaming Houses Act 1953 are considered a serious offence under schedule 2 of the AMLA.

Another example of the incompatibility of Syariah law and civil law in determining money laundering can be seen in Direct Sales and Anti-Pyramid Scheme Act 1993. The act defines "direct sale" as a door-to-door sale, a mail order sale or a sale through electronic transaction within the meaning of this Act. Door-to-do sale is defined as the act as a person going from place not being a fixed place of business or(ii) making telephone calls seeking out persons who may be prepared to enter, as purchasers, into contracts for the sale of goods or services. From the above definition, their act is in compliance with Shariah law. However, Schedule two of the AMLA provides that whoever is involved in direct sales business without a licence contravening Section 4 of the Direct Sales And Anti-Pyramid Scheme Act 1993 is a serious offence under Section 2 of the AMLA.

There is nothing wrong with delegation of power because in islam allows delegation of power, "I am going to make in the earth a vicegerent" (Suratul Baqarah: 30). Further, the narration of the prophet state, "You are more knowledgeable about your worldly affairs" (hadith muslim). The jurist may make new law based on Qias and ijtihad.

Meanwhile, money laundering is subject to legislator interpretation, donation from illegal properties involves permissible (halal food) and prohibit (haram) food which is not open for further discussion. Rasulullah (sallallahu alayhi wasallam) said:

*Meaning, "Halal is clear, and the Haram (unlawful) is clear. Between the two there are doubtful matters concerning which people do not know. One who avoids them in order to safeguard his deen (religion) and his honour are safe, while if some one indulges in it, he may be indulging in the unlawful..." (Bukhari).*

The similarity between Syariah law and civil law is that a group of Islamic jurists state that illegal property whether the owner is identified or unidentified cannot be transferred to a third party. The findings of Islamic jurists are tally with the maxim "Nemo dat quod non habet". It means no one gives what he does not have. (Setiakon Engineering Sdn Bhd v. Mak Yan Tai & Anor [2024] 8 CLJ 190

### **Mosque Financial Reporting Standard**

Identifying the Donations from illegal property/money laundering at the mosque is difficult. The accounting practices in Islamic religious organizations including mosques are less developed and do not play a central role in the organizational activities. (Intan Salwani Mohamed: 2014). Further, Afifuddin and Siti-Nabiha (2012) state religious organizations do not have a control mechanism in place to protect their resources and keep their members informed of the organization's financial status and fundraising efforts. It contributes to the offence of ML.

The crux of the problem is human character instead of lack of internal control causing reporting management systems such as budgeting, financial statements and internal control are not accurate, (Mohamed Adil et al., 2012). Daniel Cookman (2024) revealed that due to geo-politic events may raise concerns in relation to crowdfunding donations as an alternative channel to finance terrorist groups in the name of humanity. Mosque committees will be implicated if they cannot keep proper records whereby there are close relationship between money laundering and terrorist financing.

To date, there is no reported case in Syariah court about money laundering in the mosque. However, it does not mean that money laundering does not exist. The reason is that under Islamic law, it is permissible to utilize illegal money donations/non-compliance with the syariah law of properties for public usage. However, under civil law, since the money is illegal then it is forever illegal unless the Court declares the said illegal money becomes legal due to confiscation under the law or it is allowed to be utilised for certain purposes under the act of parliament.

Financial reporting for mosques is important to protect mosque administrators from being implicated in money laundering activities. It happened in Scotland where one of the committee disagreed with the chairman. He lodged a complaint that the chairman did not comply with the financial reporting standard in receiving donations or providing humanitarian aid. He alleged non-compliance with the mosque's financial reporting due to the intention of the chairman to provide financial assistance to terrorist groups. As a result, the authority froze the mosque account pending investigation. (Graham Grant, 2016).

Financial reporting at the mosque does not provide any procedures, processes, or regulations designed to curtail the practice of generating funds through illicit or criminal activities and/also to ensure that financial aid is not received to support terrorist crime in the name of humanitarian missions. However, from the experience of another country such as Syria terrorist may manipulate humanitarian aid to raise fund and sympathetic support towards the ideology of the terrorist group (Nur Amalina, 2020).

Further, the States do not put an allocation of monies to curb money laundering at mosques. There is no reason to prevent money laundering goes to the mosque account because the mosque is getting benefits from the said dirty money. Further, Islamic jurists unanimously agree money laundering/donations from illegal property can be utilised by the mosque for public advantage.

Donation from illegal properties which sometimes attract an offence under Anti-Money laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATPUA). Mosque administrators may apply to the court to oppose the forfeiture but they have to establish (i) they have legitimate interest over the property (ii) they did not participate with the offence of money laundering (iii) they lacked of knowledge of the illegal use of the property (iv) there is no reasonable inference the property was acquired for the purpose of avoiding the forfeiture (v) there have done reasonable action to prevent the illegal use of property (S61 AMLATPUA).

From the above, mosque administrator should emphasis on FATF guidelines in 6 key areas to ensure they are not implicates with money laundering as follows:- (1) Identification of customers and their beneficial owners; (2) More vigilance and diligence on any unusual transactions; (3) Suspicious Transactions Reporting (STR); (4) Documentation and proper record of relevant documents; (5) Cash Transaction Reporting

(CTR) once above the threshold; and (6) Enhanced Due Diligence on PEPs and financial intermediaries.

## CONCLUSION

This study may help the reader to distinguish between donation with illegal property and money laundering. There is similarity and the differences between both of them.

As a matter of prudence, mosque administrator has to emphasise on compliance with the Anti money laundering practice. The reason is that the federal law takes precedence over the law enacted by states. Syariah's lawyer and the judge must think out of the box and have the courage to be a judicial activist. They may interpret the existing law about money laundering in tandem with the Syariah principle without the need for parliament to amend the law.

However, this article discusses donations from illegal property and money laundering by way of cash or online. This article excludes donation in immovable and/or movable property. This article emphasis on point of civil law and Syariah law and excludes psychology, sociology and economic influence on sadaqah and money laundering.

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