Prevention and Fight against Money laundering in Iran’s law and International Documents

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Abstract

Money laundering is the ominous phenomenon of the twentieth century and the consequence of globalization and is considered as disruptive of public national and international order. The actions and operations on the proceeds of crime in order to legitimize it and conceal the origin offense are called money laundering, The United Nations in Vienna Convention of 1988; Palermo in 2000 and 2003 Merida is mandated the States Parties to criminalize this phenomenon in its internal and domestic law and the government of the Islamic Republic of Iran also joined these conventions and even has played an active role in the preparation of some of them. In jurisprudence (figh) definition of money laundering cannot be found. Money laundering on the basis of public, have the sanctity of obtaining illegal money and assisting guilty and is prohibited and criminalizing it does not contradict with the presumption of innocence and its perpetrator deserves punishment. Between Iran's anti-money laundering law and international conventions there are conflicts regards to the scope of criminalization of suspicious transactions, subject elements of money laundering offense, beginning Money Laundering, determination of original crime, related crime, crimes of obstructing the course of justice, the proceeds crime, participation in money laundering, complicity in money laundering, criminal liability of legal persons and prevention of Money laundering and challenges like the investigating authority, local and intrinsic competence of Justice Court assignment International court can be observed between them, Iran's Anti-Money Laundering Council to solve the conflicts in the Executive Regulations Anti-Money Laundering Act 2008, lay a series of legislative provisions that beyond decision making and is in contrary to the constitution and based on Article 170 of the constitution of Iran it can be voided by the court. If the predicate offense and and money laundering is committed by one person regards to the plurality of various material the rule of collective punishment will be applied.

Keywords: money laundering, the presumption of innocence, the presumption of culpability, criminalization, predicate offenses.
Introduction

One of the challenging issues of modern criminal law is criminalizing money laundering which is a sub branch of criminal law.

Money laundering is a term that in legal language, meant to conceal the origin of the dirty property and clean illegal money that caused massive revenues. Some argue that in fact money laundering is a continuation of the original offense and there is no need for independent criminalization. But what is today considered as money laundering, is that money laundering located next step of initial offense, So that money laundering is to legitimize the proceeds of crime and with the mechanism tries to reach the property out of the government confiscation as illegitimate property (Tazhibi: 75.2002). One of issues that arise here is that criminalization of money laundering in criminal law of Iran faced significance challenges with international documents. That by referring to sources these challenges must be answered.

Paragraph 5 of Article 5 of the Vienna Convention and paragraph 7 of Article 12 of the Palermo Convention 2000 and the principle of culpability is preferred to presumption of innocence. If there is suspension about the property of accused, his property recorded and now he must prove that their origins are healthy that vindicated himself and the property returned to him and if he cannot prove the legitimacy of the origin of property In addition to confiscation of property, he would sentenced to criminal punishment (Bagherzahe: 96.2002). Priority of presumption of culpability to the presumption of innocence is in contrast to the principles of criminal law. But to justify this practice in these cases the legal justice and social interest is used. So then ratified the Vienna Convention of 1988, 2003 and Palermo in 2000 and Merida 2003 and joining many states including Iran, Many states passed laws regarding the reverse of alleged. But our legislators to combat money laundering in article 2006 didn’t prefer the presumption of culpability to presumption of innocence (Graily: 389, 40).

Problem statement:

Methods to deal with money laundering in Iran's anti-money laundering law and international conventions

Money laundering is done by criminal gangs and mafia extensively and international level therefore it is necessary to evaluate criminal (of punishment) and non-criminal (Prevention) ways to deal with it. This issue in Iran’s Anti-Money Laundering Act and in international conventions will be evaluated as follows.

1. Punishment

Primarily in discussed international documents determining the punishment handed over the contracting states that to consider the punishment fits the crime, Money laundering is not an exception to the general rule. In this regard, according to the domestic laws of each Contracting State and taking into account the severity of the crime, every country should determine the
appropriate penalty. Vienna Convention 1988 in sub-paragraph (a) of Article 3 has emphasized the states parties to the four penalties of imprisonment, depriving of liberty, fines and confiscation for money laundering criminals. As well as the Merida Convention 2003 in paragraph 1 of Article 30 insists the fitness of the punishment to crime as well as in paragraph 1 of Article 11 of Palermo Convention the proportionality between the punishment and the crime is considered but in Iran’s anti-money laundering law, penalties predicted for the perpetrators have fundamental bugs from all aspects that these defects are mentioned briefly:

Penalty of steward and partner in crime of money laundering has been determined by a quarter cash of proceeds of crime. This punishment seems very inappropriate and ineffective. We never really know that committed crimes are not equal to those who discovered and proved; since the actual crime are many times more than discovered and proven crimes. This difference in the money laundering crime doubles in the cases which has no direct victim and the plaintiff. This means that a small percentage of money laundering crimes are being detected and prosecuted, that even if in this situation, many cases do not reach a conclusion because of the inadequacy of the evidence. If for a small percentage of that discovery, tracking and proved cases punishments were so poor and mild, it didn’t intimidate potential offenders and those convicted of such punishment couldn’t be modified.

Compared to the same crimes theses penalties are so minimal: However, in all major financial crimes (such as fraud, theft, breach of trust, embezzlement, bribery, etc.), imprisonment is predicted. On the other hand in the law of drug prevention, in addition to severe punishment of execution or long prison, confiscation of all property (except for normal living costs for the family of the offender) is predicted and even in Clause 3 of Article 5 of this law for those who violate anti-money laundering implementation procedures based on the discretion of Supreme Council and administrative authorities, dismissal from service for two to five years is considered.

But in Iran’s anti-money laundering law, only punishment of a quarter of an illegal as fine compared to that similar crimes have no appropriateness with the crime. Accordingly, even at international level the drafter of convention believed that the parties will certainly determine imprisonment. They also recommended paying more attention in granting parole.

Despite all these criticism and the fact that in 2002 the committee that was formed in the judiciary, with the insistence of some lawyers six months to two years imprisonment had been predicted, But eventually in Article 9 of the mentioned law the fines for perpetrators of money laundering equal to a quarter of the proceeds of crime is predicted. (Asadi: 2006, p. 206).

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1. Article 9 of the Iran’s Anti-Money Laundering
2. On modification the law to fight against drugs and interpolation provisions to it approved by the Expediency Council 8.11.1997 In several cases as a punishment, confiscation of all property of criminal with the exception of normal living costs for their families is predicted and one of the following can be cited: Section 4, Article 4, Article 4,
Iran's anti-money laundering law passed in 2006 only for individuals who commit money laundering predicted punishment in Article 9. But the initial drafter of legislation, while in valuable effort considered criminal liability for legal persons, but it’s just limits to Liability Partnership of the assets and fines. But in law ratified in 2006, criminal liability for legal persons is generally ignored and not recognized. This is despite the fact that Articles 1 and 26 of the Palermo and Merida Convention— in order to pass in a domestic law- is dedicated to the liability of legal persons.

One of the most important penalties for money laundering in discussed conventions is the confiscation of property. Confiscation of cleaned or on the verge of cleaning property is very important. And therefore special rules in this regard are predicted in these Conventions. in the field of state co-operation about confiscation of profits and property which can be confiscated and ultimately transferring the property to another country (country of transfer) since the investigation, the issuance and enforcement of criminal laws are of the obvious exercise of states sovereignty, So often the verdict should be issued by the courts of any State and that state and court must run and implement the verdict too. This issue would cause prolongation and ultimately concealing the benefit of crime or property that can be confiscated. So the state parties are obliged by the Convention that upon receipt of the confiscated request immediately detect or block property for the further confiscation of property.

We might add that in most cases the benefits of the committed crimes have been changed to other forms, to prevent the detection and discovery of committed crimes (laundering). If the benefits of the crimes in whole or in part are converted into other property, the alternative property will be confiscated. In some cases benefit from crime along with other legitimate property may have converted in other property. For instance a property valued at five hundred million tomans purchased that three hundred million tomans of that amount obtained from benefits of the crime and two hundred million tomans provided by legitimate property of a person to prevent crime detection and ultimately prevention of confiscation. The drafters of the Palermo Convention in Article 12, paragraph 4 in this field have predicted that for fusion of the interests of the crime with legitimate property, this property to the extent that the interests of crime are evaluated, will be confiscated. That is in given example we were able to confiscate 60% the property as the following three hundred million tomans of the price or value of the property was financed by benefits of crime.

Article 9 of the Iran’s Anti-Money Laundering law provides as follows: perpetrators of money laundering In addition to the extradition of the proceeds and property caused by the offense he/she are condemned to a fine of a quarter of property derived from criminal activity. The basic

paragraphs 4, 5 and 6 of Article 5. Although the confiscation of all personal property also seems unfair and not compatible with the goals of punishment
4. Clause 3 of Article 3 of the Anti-Money Laundering of Iran.
problem of this article is that legislators are mixed the concepts of record, confiscation and the extradition while each of them has their own meaning. Recording is temporary ban of object without expropriation of the owner in part of the property. Confiscation is compulsory removal of property on behalf of state permanently. The extradition is the surrender of recorded material or property found by the accused or convicted to its legal ownership (Jafari Dolat Abadi: 2006, p. 7). So the recording doesn’t have punishment aspect and the return of property has no criminal aspect and it is just to compensate losses and damages of owner. Of course, in Notes 1 and 2 of Article 9 of the mentioned law, to seize and record the assets and the proceeds of crime is predicted that shows the intention of legislator in the term "the extradition of income or benefits derived from the crime" which stated in the Article 9 is confiscation of property. Apart from this objection, in the Law on Combating Money Laundering merely the expression of "seize and record the assets of illicit origin in the absence of equivalent or the price" has stated and even the manner of implementation of the seized property is not specified. In this law explicitly the task of mixed property with a clean property is not specified. On the other hand, since the transnational characters of this crime are not considered, No major international cooperation regarding confiscation is predicted. Fortunately, Firstly, Clause 1 of Article 9 has appointed that if the revenue of crime is converted or changed into other property, exactly that property will be seized. Secondly, in accordance with Article 12 "In cases where the Government of the Islamic Republic of Iran and other countries in the fight against money-laundering the different judicial and intelligence legislation is approved, Cooperation will take place in accordance with the terms of the agreement. " Due to ratification of the Merida Convention by Iran Which in its fourth season, international cooperation such as extradition, transfer of convicts, and mutual legal assistance, transfer of criminal records, and cooperation to prevent and detect the transfer of proceeds of crime and the confiscation and restitution of property is specified, It can be concluded that Iran has the right and obligation to this international cooperation in money laundering field.

Iran’s Anti-Money Laundering legislation didn’t consider issues of aggravating, mitigating and impunity and didn't have expressed their sentences. If someone committed repeated crimes of money laundering what should we do to him, is not clear. Perhaps in such cases we must refer to the general articles of Islamic penal code. But that was worthy that policy makers specified these issues decree in that anti-money laundering legislation because money laundering is a particular crime and required its specific provisions.

In regards to the punishment of the offender of predicate offenses If he/she does money-laundering offense according to Clause 3 of Article 9 of the Iran’s Anti-Money Laundering the rule of collective punishment apply that is beyond the punishment for the committed crime, offender of money laundering shall be condemned to penalties provided in this Act.

1- Prevention

Crime and violation of norms, values, customs, regulations and procedures established by human, have been with human beings and step by step with the progress of humanity, science and
technology and the passage of time, getting more and more complicated. Hence, to address and respond to this social problem, many years Human societies apply the security-oriented ideology in the form of suppressive measures and actions. But the results of these criminal responses didn’t lead to crime reduction and increased delinquency continued. Thus, excessive increase in delinquency and illegal and criminal actions, in domestic and international dimensions caused to the emergence of various criminal schools and each school in order to correct earlier schools and prevent and combat crime more effectively, adopted and presented their own strategies, approaches and methods. With the advent of new social defense school by French Marc Ansel and Italian Gramatikay, and the influence of their new ideas in order to combat crime little by little, the traditional criminal justice and security-oriented ideology, ideology being replaced by preventive ideology and restorative and mediation criminal justice, so beside repressive measures, Rehabilitation measures of offenders in order to correct offenders and return of them to the society is necessary. In this section, the concept of prevention, and its types, namely primary, secondary and tertiary will be discussed.

2-1. Prevention of Money Laundering:

Today, preventive criminology is a branch of applied criminology⁵ that its goal is determining the most effective means for the prevention of crime in the scale of the whole society or a more limited population, such as a city or an area of a city. Recognition of this branch of science ³ of criminology is so important; for the prevention of crime, is one of the most studied issues of today's world.

Preventive criminology is the scientific study of performance and features of crime prevention which may be at the level of a country, city or neighborhood. In this criminology, on the verge of committing a crime in order to frustrate and stop that crime, some actions take place.

The international community concerns are about the spread of drug trafficking and organized crime networks and laundering the proceeds of crimes which go beyond the boundaries, legal institutions and even jeopardized states' sovereignty and lead to efforts and increasing cooperation between countries. Because today experimentally for most countries have been proven that with all its efforts alone and only with the punishment cannot overcome this scourge and phenomenon and for their victory in the fight against this global problem and predicament the cooperation and support of other countries is required and in addition to punishment, preventive measures is essential. Although the commitment of countries to work together is not the same because sometimes the national interests of country prevent strengthening international efforts. Yet the Administration to work together in the field of prevention is an international strategy that nobody can deny its necessity.

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⁵ Preventive criminology is the study of practical reliability of the equipment and facilities of fight against corruption (For more information, refer to Abrndabady Najafi, Ali Hussein, course criminology, criminal law and criminology PhD, Faculty of Humanities, Tarbiat Modarres University, first semester 80 - 79, p. 8 and later).
Prevention of crime and ways of achieving that goal is a branch of criminology that is being interested by scholars and officials. Prevention concept has two dimensions: Prevent or avoid it means "forestall, overtaking and take the lead of thing." And also it has meaning of "to inform, and warn about something and premonition". But in preventive criminology, prevention can be used in the first meaning. This means by using different techniques in order to prevent delinquency, to prevent crime is to go and stay ahead of delinquency but from scientific perspective, prevention is empirical-logical concept that Simultaneous arias from rational reflection and empirical observations (Najafi Abrrnadabady: 1999, p. 6-135). Different definitions of "prevention" is presented that just another case of Mr. gozón is mentioned: Prevention includes all measures of criminal policy -with the exception of the criminal measures - The exclusive purpose, or at least its part, is limiting the possibility of criminal action through making it impossible, difficult or at least less likely ((Gassin: 1994, p 589)). Total preventive measures have non-criminal nature, and prevention in certain means is non-criminal prevention and penalties aren’t prevention means strict.

2-2. Type and kinds of Prevention of Money Laundering

In conventional prevention, from one aspect, prevention has been separated into three stages, namely primary prevention, secondary prevention and tertiary prevention inspired by the traditional medical model. Of course, it should be mentioned that the content of primary and secondary prevention can be a social and sometimes a situational prevention.

2-2-1. Primary prevention

Primary prevention (first) contains measures to have the desire to change the crime causing situation and circumstances of the physical environment and the social environment (i.e. improvement of living conditions).

2-2-2. Secondary prevention

Secondary prevention (second) includes preventive measures that refer to specific groups there is fear of committing crime by its members. In other words, the audience and subject for the action is a specific group or population. For example, children and adolescents in destitute and poor slums and in improper state (i.e. modification of social structures and institutions), the municipality actions or city council's decisions and also organized and spontaneous popular activities are used in this framework.

2-2-3. Tertiary prevention


The answer to the question of how factors causing offense can be eliminated partly depends on which instrument we consider as the instrument of offense. According to one view economic and
social change can only be considered as effective preventative measures because the criminal phenomenon has economic and social roots. The second theory considers mental metamorphosis of actual or potential criminals as crime prevention because crime always comes from the person. And at last the third theory stresses the moderating social and physical conditions. Most measures which adopted and implemented in the today’s world are based on the third approach (Krzysztof: 2002, p 242).

Some writers consider prevention of crime as distribution some responsibility for maintaining national security to citizens ((Obergefell: 200, p.p 181-6). According to hold citizens responsibility and their active role in prevention policies and crime control, some of the authors called these measures, the strategy of "giving responsibility"(Garland : 2001 , p 196). Tertiary prevention is based on clinical criminology, correction and treatment which preventive programs are applied in stages to the offender.

3- Prevention in International Treaties and Compare with Iran’s Anti-Money laundering law

Prevention of money laundering in the Conventions of Vienna, Palermo, Merida and in Iran's anti-money laundering law will be studied as follows.

3-1. Prevention in International Treaties

3-1-1. Palermo International Convention

Palermo Convention after forecasts and recommendations of criminalization of money laundering to member states (Article 6) and also preventive measures to combat organized crime (Article 31), In the fight against crime of proceeds of money laundering covered by the Convention, to adopt measures to prevent and combat it, has particular determination and Article 7 is dedicated to the prevention of this crime. Thus, in order to prevent this crime, In addition to the anticipated general preventive measures by Member States, adopting Special preventive measures against this crime, is essential and offering such a thing by the Convention and its recommendations to the member states, indicate the importance of this crime and international community's attention to this issue, because this crime emerge and emanate due to committing other crimes therefore, if the crime has been taken very seriously and actions to prevent it, have been done, naturally the other crimes such as drug trafficking, which have acute need for laundering the proceeds of crime decreased and other perpetrators of crimes resort to refrain front and original offense. Hence, this issue means to deal with the crime of money laundering by adopting preventive and repressive measures and security-oriented and rehabilitative ideologies, can prevent from committing this crime which preceded the former, and also reduce the rate of its and major and precedence crimes also decreased and therefore prevent recidivism. In this regard, particular prevention (Article 7) for money laundering and preventive measures for all crimes subject to this Convention (Article 31) discussed. Convention has obliges member states to develop The full set of regulations for
banking institutions and non-banking and other supporting institutions Which is likely to attempt laundering. In order to detect and deter all forms of cleaning.

According to Section (a) of paragraph 1 of Article 7 of the Convention: "each State Party shall, wherever it considers suitable, In order to detect and deter all forms of money laundering, adopt a full internal legislative and jurisdiction and regulatory system for banks and non-bank and financial institutions and other entities that may money cleaned through them. This system should be emphasizes on provision for customer identification, recording event and reporting suspicious transactions."

Given that organized crime gangs, in order to cleaning benefits of these offenses, before trying any way to circulate the proceeds in the legitimate economy, use the banks and transferring it via the banks to legitimate economic system. So in response to this issue and in order to avoid influence and circulating revenues from them the first essential step is to develop regulations for these institutions to achieve the mentioned goals.

At first it seems that developing and adopting such a regulation for the institutions is in contradiction and conflict with the accepted rules of banking secrecy (which causes citizens' confidence to invest in the institutions), but the need and necessity to adopt such measures in order to prevent these crimes, which often cooperate with transnational organized criminal groups and gangs and also takes place in several countries was preferred to banking secrecy principle and required cooperation with countries in the drafting and editing and implementation of procedures and regulations within the internal and international dimensions.

Council of Europe is the first international organization that In 1980 on the recommendation of a Committee of Ministers, in addition of warning the international community about the dangers of this crime to democracy and the sovereignty of law, considered the banking system as a tool that can play quite effective and preventive role and stated that banks can help the police and judicial authorities in fighting against criminal acts and with identification of all individuals who cooperate with these institutions, along with other measures, be effective and efficient (Hans: 1996, p 6).

According to the purposes set forth in the Convention, In paragraph 6 of Article 12 with preference of working with banks and non-bank and financial institutions with regard to the principle of banking secrecy is stated that " Aligns with the objectives of this Article and Article 13 of the Convention, each State Party shall provide its courts or other competent authority to issued, acquired or seized of bank, financial or business records. Member States cannot refuse the implementation of this paragraph in excuse of banking secrets."

In order to fulfill and implement paragraph 1 of Article 7 of the Convention in France for detection the crime in banks and credit institutions, administrative body established, which stands for the "Tracfan" and works under the Ministry of Economy and Finance and In all branches of the Central Bank has a branch or office which its task is to control the banking operation higher
than a specific amount, so that as soon as operations and transfers seemed suspicious and were higher than the amount, research the origin of the money and evidence suggests money laundering, immediately notify the Ministry of Finance and simultaneously through that ministries, prosecutors and judicial police will be notified (Najafi Abrndabady: 80-2000, pp 60-61). So we see that the existence of such regulatory elements are deterrent for customers and to prevent staff collusion it means that on one hand leads to the discovery of money laundering and on the other hand, prevent the crime to takes place. Based on section (b) of paragraph 1 of mentioned article each Member State should be ensured, without damage and prejudice to Article 18 and 27 of the Convention, that the executive, administrative, regulatory officials and other committed officials in the fight against money laundering (If the internal law allows it’s include the judicial authorities, too) have permission of collaboration and exchange of information on national and international levels in terms of their domestic laws. In order to achieve this goal, a financial intelligence unit as a national center for the collection, analysis and transmission of information on potential money laundering must be created.

The establishment and creation of a financial intelligence unit as a national center in each country is in order to collect, analyze and transmit information about potential money laundering and information exchange among countries, particularly countries committed to the Convention, and since according to transnational organized crime that often elements of it happened in several countries or perpetrators reside or settled in different countries, this administrative body will be very effective in the fight against and prevention proceeds of laundering because in the cleaning proceeds of these crimes, offenders should utilize legal procedures, especially domestic legitimate economic system and in any way, in the laundering and cleaning the proceeds and to circulate it in monetary and financial system offenders must pass through the legal system. So if regulatory, administrative, police and law enforcement officers tools are established and also teaching administrative personnel and executive and judiciary about sophisticated practices and procedures that criminals would employ, In addition to creating an entity to direct and guide the officers and above mentioned tools, inevitably the perpetrators of this crime, because of concern and fear due to arresting them if they engage in criminal acts, at least less than before they engage in illegal and criminal acts and thereby leads to reduction of crime and money laundering on the one hand and on the other hand limits the front and the main crimes and the creation of this entity, it seems, for now, that is an alternative approach which play effective preventative role in the fight against crime, money laundering and consequently with all organized crime. The positive outcome of it will not be covered for the international and local community.

paragraph 2 of Article 7 Points that: "Member States must examine the implementation of possible measures for detecting and monitoring the transfer of cash and appropriate financial instruments in their borders, Provided that being ensured, the state shouldn’t hinder the proper use of information and any legitimate movement of capital. Such measures should include provisions by which individuals and traders must report transferring a large amount of cash and financial documents through their borders". It seems that this paragraph by requiring countries to
implement possible measures to detect and monitor the transfer of cash and appropriate negotiable instruments in borders and taking measures that by which people should report transport cases, has adopted criminal policy of partnership that persons (natural or legal) if suspected to significant sums of cash should report to the competent officials. If this issue occurs it causes fear for perpetrators that in addition to government officials, and judicial and police tools, people and individuals (natural or legal) by the provisions in this paragraph, can report to the competent authorities and they are caught. In view of the fact that the self-reported or reported such acts by peoples and individuals, about the crime and laundering proceeds is accompanied with negligence and tolerance among individuals and the community, It seems that the media should educate people notify them on the dangers of this crime on the economy and ultimately for human society, create a culture and values to report such illegal activities in society to expected the implementation of the above issue.

3-1-2. Merida64 Convention

Dominance of globalization phenomenon and to facilitate cross-border exchanges and communication leads to the spread of transnational organized crime and has proved this fact that not only no government is immune from these disasters but because of the complex and cross-border organized of these networks government cannot confront and destroy them alone. In the past, the only some crimes known as transnational and were persecuted but at the early 1990s human society has realized the importance and disadvantages of some traditional crimes and has placed them among the transnational, so that even the existence and political independence of states are also threatened. Due to the transnational character of organized crime such as money laundering, it is necessary to deal with such crimes, both at domestic and international level and with the cooperation of two or more States in the form of penal and non-penal code (Bagherzade: 2003, p. 273). Since otherwise criminals easily cross borders by the cooperation of frontiersmen and stay immune from prosecution. Thus, the government of many countries contract multilateral treaty to work together to prevent and discovery and prosecution of such crimes and discussed its various aspects in different documents like five-yearly Congress on Crime Prevention and reform criminals of UN and keep pace with the development of the Palermo Convention, a lot of discussion about financial corruption and development of an independent Convention on the prevention and fight against financial corruption was done and in this regard, Merida Convention 2003 was approved by the members and in articles 14 and 52 of the Convention by the title of "Measures for prevention of money laundering" and "prevent and detect the transfer of proceeds of crime" each State Party is required to establish comprehensive legal and regulatory systems for supervising banking and non-banking and financial institutions in the country so for natural or legal persons that provide formal or informal services for the transmission of money or securities and, where appropriate, other persons suspected of money laundering within its jurisdiction and

6 Merida is a city in Mexico, most member states have signed and ratified the International Convention against corruption in that city.
to prevent and detect all forms of money laundering and according to customer requirements and determine the beneficial owner report suspicious transactions. And other methods of prevention of money laundering come in the different clauses and paragraph of the Convention that we draw attentions to them.

3-2. Iran's anti-money laundering prevention law

Due to the harmful consequences of the crime of money laundering it seems that prevention this crime has huge profits to community and will prevent a lot of damage. This crime has specific features and special measures are needed to prevent it, some of which are discussed in international conventions and now a variety of prevention of money laundering in Iran's anti-money laundering law examined to determine to what extent Iran’s law is in accordance with the Convention on international coordination.

3-2. Adjusting banking secrecy rule

The banking system is a common way to commit the crime of money laundering. On the other hand the principle of banking secrecy which is common among banks prevent from discovery of the crime, this rule should be in harmony with the international conventions as well as the public interest and by modifying it, the consequences of this crime will be reduced, In a way that does not undermine this principle and cause lack of public confidence in the banking system and not money launderers could easily commit their illegal acts.

Therefore, in Article 5 of the Anti-Money Laundering all legal entities including the Central Bank of the Islamic Republic of Iran, Banks, financial and credit institutions, insurance companies, central insurance, loan funds, charity foundations and municipalities are obliged In accordance with regulations adopted by the Council of Ministers, cooperate in the implementation of the law on combating money laundering and in note(waver) of Article 7 of the Act providing information, reports, documents related to the money laundering to the Supreme Council for Combating Money Laundering, As well as reporting suspicious transactions to the competent authority that the Supreme Council is determined to combat money laundering, is anticipated. But as well as we said modification the rules of banking secrecy should only be done in order to combat money laundering and predicate offenses, so take advantage or misuse of this information and use it directly or indirectly to your own or somebody else advantage by government officials or other persons is prohibited and based on Article 8 of the law of combating money laundering and violator will be condemned to punishment contained in the Penal Code to punish publication and disclosure of confidential and secret government documents approved by 18/2/1975. But the important point is that the modification of the rule of banking secrecy and client authentication based on Article 7 of the Palermo Convention must done by law of a government But in Iran, it was done according to executive regulations of the law on combating money laundering which is in violation of international documents and constitution of the Islamic Republic of Iran that will be discussed in detail.
3-2-2. Strengthen Regulatory Control Tools

Sound law and rule in fighting crime is necessary, but it isn’t sufficient. Proper and accurate Law enforcement is essential for any kind of crime. If the control and monitoring tools for the implementation of the law is not anticipated Anti-Money Laundering rules will confront with the same challenges and problems that we are facing in the fight against smuggling, drug trafficking, corruption, financial and economic crimes, and perhaps the law being abused and has reverse results. So in Iran’s anti-money laundering law, tools of control and supervision are ambiguous.

3-2-3. Reform and Modifications of Banking Regulation and Central Bank Supervision on Financial and Credit Institutions

In this regard, the following can be noted some of which are mentioned in the law on combating money laundering and other is considered in related Bylaw which based on international documents they should be common like law.

A) customer identification: Banks and financial institutions are required to establish the identity of the client and and to prevent the offering of false documents such as birth certificates and other fake identification to them, because to escape from the law money launderers have always attempted to deny their identity. This matter should also be noted about the agent or lawyer.

B) Determining criteria for opening a bank account.

C) Determine the criteria for issuing bank draft.

D) Report suspicious banking operations: Of course, in order to prevent abuses and irregularities and to avoid disrupting people’s daily affairs, it’s better to defines precisely suspicious transactions by the law and teaching to employees.

E) Determine the criteria for the issuance and delivery to the checkbook.

f) Determine the criteria for the issuance of bank guarantees.

3-2-4. International Cooperation to Fight Money laundering and Using the Experiences of other Countries.

We know that Iran is at the beginning of the fight against money laundering and gaining enough experience in this struggle is necessary. That’s why using the experiences of countries that have struggled for years with this crime and have achieved fruitful results is also essential. We were told that some types of crime of money laundering have foreign origin, it means that the dirty and illegal money is injected into Iran from abroad and international cooperation is crucial to combat money laundering but there are few contracts between Iran and other countries in line with these international obligations regarding the prevention of money laundering phenomenon.

3-2-5. Adjusting the presumption of innocence and reverse the meaning of alleged
As you know, the presumption of innocence is one of the principles of criminal law and it has been emphasized in the international conventions and also alleged by plaintiff that is the defense rights of the accused and is a presumption of innocence, faced challenges in the fight against money laundering and if to be considered strictly in most cases, money laundering detection is getting difficult or impossible which it isn’t good for public interest and cause money launderers escape from law and justice, because money laundering benefit from the latest scientific achievements and technology and try to circumvent the law by concealing behind principles such as the presumption of innocence and meaning of alleged, Therefore, in the International Convention the presumption of innocence and alleged principle have been emphasized; That is the same thing as "whence comes" is raised. principle 142 of the constitution of the assets of the Leader, the President, Vice President, Ministers and their wives and their children before and after the service have been discussed which has been investigated by the head of the judiciary that is not increased unjustly. Investigating the above-mentioned Officials’ assets, which are highest rank in the country isn’t opposed to the presumption of innocence; since it isn’t assumed that they have achieved their property unjustly. The same issue can also be applied to other citizens, so who had the weak financial ability and his life history also indicates, once he/she owned an abundance of riches and he/she deposited a large sums in bank accounts; In this case, he/she must prove in what way he/she acquired that property and it does not conflict with the presumption of innocence (Saki: 2008, p. 72). Modifying the presumption of innocence and reversing the alleged can be one of the ways of preventing money laundering phenomenon.

6-2-3. The need to record transactions and determining the criteria for companies registration

Placement, layering and integration for money laundering is done through multiple and by the name of various institutions and companies so If registration of transactions become mandatory and getting formal and legal and no one can easily with a meager attempt to register multiple ostensible companies and shortly thereafter, Money laundering crime can be prevented.

issue covered in Article 6 of the Anti-Money Laundering Act: that is providing information that is required by the notaries, lawyers, Auditors, accountants, legal experts and inspectors of the Supreme Council of Justice does not seem sufficient to combat money laundering, Since this group of natural and legal persons who are obliged to report the information required in the field of money laundering Regardless of the the matter that law enforcement are not set administrative guarantees for this task and it is more like a moral rather than a legal force and reporting suspicious transactions required to be with information and these persons with the conditions that companies are registered, which has no specific criteria, can’t obtain enough information to report. In any event it can be seen in the 2007 anti-money laundering, strategies for the prevention of the crime whether social or situational in the three various levels haven’t being well considered and some cases that can be seen are incomplete and should be modified too.
Conclusion:

Money laundering, throughout human history exists but it is considered as ominous phenomenon of the twentieth century and it is the consequence of the global village and globalization so in this century has entered in the domain of criminal law. In this study substantive challenges between Iran's anti-money laundering law and international treaties were discussed and issue of criminalization and ways to tackle the phenomenon of money laundering according to international conventions Vienna, Palermo and Merida were studied and Iranian anti-money laundering law compared to international conventions and according to the research question that what is the base of criminalizing of money laundering in law and jurisprudence (figh) of Iran? We reach to this conclusion that firstly we can’t find specific definition for money laundering in jurisprudence (figh) However, in regards to secondary verdicts (law) and verdicts where indicating the urgency, money laundering is prohibited and Money laundering on the basis of public, have the sanctity of obtaining illegal money and assisting guilty and is prohibited and criminals should be punished. Principle 49 of the constitution and Article 5 of the methods of implementation of Article 49 of the law usually argue as well as Article 28 of the Regulations courts and prosecutor's offices in Revolution Act ratified on June 17, 1979 and Article 622 of the Islamic Penal Law are primary manifestations of money laundering law in Iran which are not independent us of anti-money laundering law and the law do not meet society's needs.

In the early manifestations of money laundering in Iranian law, there is a prospect of the fight against cleaning of illicit funds in early Islam that the imams, especially Imam Ali (AS) strongly and decisively dealt with it and the property was returned to its origin.

In response to the question whether Iran’s Anti-Money Laundering Act are in conflict with international treaties or not? The survey revealed that Iran's anti-money laundering legislation in terms of criminalizing and punishment aren’t in accordance with international treaties because in Article 3 of the Vienna Convention and in Palermo Convention Article 6 and in Article 8 of the Merida Convention criminalize having suspected property and recognized its components However, Iran's anti-money laundering law which is based on Islamic law didn’t criminalize owning property and suspicious transactions since it is believed that based on the evidence and arguments in the money laundering law, In the process of criminalization, investigation and discovery of the crime, there are conflicts with legal rules and Islamic rules. Including conflict with the rule of prohibition of invasion of privacy and the presumption of innocence is evident but by considering carefully at the evidence and the definition of money laundering and finding that it is of secondary rules and indicating the urgency or the public, it is clear that committing this crime is prohibited and by looking to the interests of the Islamic community these conflicts can be solved but Iran's anti-money laundering law passed in 2007, didn’t criminalize this model. And in regards to the offense of threatening the witness, the beginning of the crime of money laundering, predicate offenses to determine the difference between the financial advantages and income from crime, forms of crime (participation or Assistance) and the criminal liability of legal
persons who engage in money laundering there are significant conflict between Iran's anti-money laundering law and international conventions. For example, in the mentioned treaties with a specific purpose predicate offenses stated and the purpose is that a crime that was great and disrupts economic and political power of the people, society, so money laundering and proceeds of this crime should be criminalized and no revenues from small crimes, but the concept of predicate offenses in Article 3 of the Anti-Money Laundering of Iran is not known. Thus, in Article 3 of the last-mentioned rule, the Money Laundering income from stealing sandwich bread also will be subject to crime of money laundering which this assumption is in violation of mentioned international treaties. In a variety of criminal and non-criminal reaction, Iran’s anti-money laundering law is very weak because in the Convention the diversity of sentences such as short-term, long-term prison, fine, social (community) penalty, deprivation of social rights have been emphasized. But Iran's anti-money laundering law in Article 9 include fine and it wasn’t in accordance with crime and It was very small and had no deterrence aspect.

to resolve these conflicts, criminal law of Iran confronted with many challenges and it not used the rule of modification of law in modern criminal law properly and without documentation pass regulations and regulations are in place of the law and so the executive has initiated a series of legislative acts include: The law criminalization to regulations criminalization, The draft of criminal law to penal regulations, these cases are in contrary to Article 36 of 1.1 edition of the Constitution and by Administrative Justice Court is voidable.
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