UNIVERSITI TEKNOLOGI MARA

THE IMPEDIMENTS IN APPLYING THE ASSET FORFEITURE MEASURES FOR MONEY LAUNDERING IN MALAYSIA AND THE UNITED KINGDOM

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ABSTRACT

For a long time, the matter of money laundering has been drawn toward the proceeds of crime. In this sense, proceeds of crime can be described as money or property earned from profit-oriented crime. Hence, the necessity for asset recovery, especially to forfeit such proceeds, is considered one of the legal tools to deprive money launderers of illegal profits, and the AML regimes give criminal justice actors the power to do so. However, in applying the asset forfeiture measures involving money laundering and other predicate offences, the criminal justice actors face several legal, technical, and operational constraints. Previous local research has not addressed the application of the forfeiture laws, let alone the impediments in such a process. Given such impediments, the central thesis is twofold. Firstly, the primary criminal justice actors involved in the asset forfeiture process are somewhat reluctant to apply the forfeiture provisions for money laundering cases in the AMLATFPUAA 2001 and favourable to apply other forfeiture laws, especially involving the forfeiture in drugs, corruption, and economic crime cases. Secondly, their reluctance to apply such forfeiture provisions is attributed to their legal, operational, and technical impediments when applying them under the 2001 Act and other forfeiture laws. Guided by these prepositions, the research examines the application of asset forfeiture measures under the AML regime and the impediments facing criminal justice actors. At the theoretical level, this research analyses how the rational choice theory, routine activity theory, proceeds theory, and facilitation theory would inform the implementation of the asset forfeiture process. This study adopts qualitative methodology, in which the primary data is obtained from semi-structured interviews with fifteen respondents involving the judges, prosecutors, and law enforcement agencies. The sampling technique used is purposive sampling. The primary data was triangulated with the representative from Bank Negara Malaysia. The findings of this research are in Chapter Five. The legal analyses of the United Kingdom and Malaysia are presented in Chapter Three and Chapter Four, respectively. This research reveals that criminal justice actors constantly face legal, technical, and operational challenges in their duties. This study aims to contribute to the body of knowledge and literature on the asset forfeiture measures in Malaysia, which would assist policymakers and others directly involved in this system. Moreover, it is crucial for the criminal justice players involved in asset forfeiture to enforce and implement the forfeiture procedures and exercise their duties in good faith to ensure the law's effectiveness and prevent abuses in the system.

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TABLE OF CONTENTS

CHAPTER ONE
INTRODUCTION TO THE RESEARCH

1.1 Introduction

This chapter provides the structure and outline of the research, which shapes the central aspect of the research, covering the background of the study on the concept of asset forfeiture/confiscation measures in the AML regime. The first part explains the money laundering crime in Malaysia, the United Kingdom (UK), the European Union (EU), and the asset forfeiture/confiscation measures within the said jurisdictions. The chapter continues with a discussion on the problem criminal justice actors face in applying asset forfeiture/confiscation involving money laundering cases, including predicate offences. The global and local literature suggests that criminal justice actors involved with asset forfeiture/confiscation measures face several legal and non-legal impediments, which will be discussed further in Chapters Two and Five.

Additionally, the second part lays out the two central arguments or the thesis of this research, which are the driving forces behind this research. The third part discusses the research questions, which explain the issues to investigate and address. Together with the central thesis, such questions have guided the researcher in this research. Indeed, these questions will be answered via the literature provided in Chapter Two, the legal analyses in Chapters Three and Four, respectively, and the findings in Chapter Five. The next part of the chapter presents the research objectives, in which the tasks are essentially involved in conducting the research, and it must be in accordance with the research questions to be answered.

The fifth part of the research highlights the methodology undertaken to address the research questions and achieve the research objectives in the study. This part explains the justifications for the qualitative research methodology, the process of data collection, the management and analysis of data, and the data quality to ensure validation of the research. In other words, this part elaborates on the methodological aspects of primary and secondary data engaged in this research. Subsequently, the chapter then explains the scope and limitations in this chapter's sixth and seventh parts. The former describes the boundaries underpinning this research, while the latter explains the researchers' constraints in carrying out this research. Finally, this chapter