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**MONITORING LAWYER'S COMPLIANCE WITH ANTI MONEY  
LAUNDERING LEGISLATION: SOME EVIDENCE FROM  
MALAYSIA**

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***Abstract***

The threat of money laundering and terrorism financing are real and imminent to many countries around the world, including Malaysia. Such threats have led to the creation of anti-money-laundering legislation and strategies. In 2003, the Financial Action Task Force (FATF) required the creation of financial intelligence unit (FIU) to oversee the implementation of anti-money laundering & anti-terrorist financing (AML/CFT) laws. In Malaysia, such general authority is the Bank Negara. Alongside such FIU, the legal profession in Malaysia is regulated by the Malaysian Bar Council which is one of the gatekeepers under the AML/CFT regime. This paper will discuss the extent of the roles of these regulators in monitoring the compliance of the legal profession to AML/CFT. This paper adopts a qualitative research, of which the primary data is obtained from seven case studies of legal firms in the country. This data is then triangulated with the primary data from the Central Bank and the Malaysian Bar Council. The evidence suggests that the effort of the FIU is mainly concentrated on financial intelligence which has the biggest risks of money laundering and terrorism financing. The role of the Bar Council in monitoring their members' compliance with their obligations under the AML/CFT regime is rather minimal.

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## 1. Introduction

Since 1980's, money laundering has been a grave concern of many governments worldwide, including Malaysia. Initially, the only measures taken at the international level to counter money laundering is the Vienna Convention 1980 which criminalizes proceeds of drugs-related income. Over the years, such crime has evolved from the abuse of financial institutions to the misuse of professional, businesses and the non-profit organization (Mateus, 2017). The FATF mandated the establishment of a centralized competent authority, known as the Financial Intelligence Unit (FIU) to process and monitor all the information related to money laundering (Moloney, 2011). In many jurisdictions, the FIU, being a single supervisory authority for money laundering, has extended their working partnership with other self-regulatory bodies such as the money services business association, the bar council, the financial institutions and other self-regulatory organizations that are related or fall within the ambit of money laundering. Such working partnership is to ensure more efficient supervision of the reporting institutions.

It is with this regulatory terrain that the primary objective of this paper is to examine the roles of the Bank Negara or the Central Bank which is also the FIU in monitoring the legal profession's compliance with their AML obligations. Also, this paper seeks to examine the extent of the efforts taken by the Malaysian Bar Council in ensuring their members' AML compliance. The first part of the paper discusses on the problem statement of the article, which is followed by the research questions and the research of objectives of the paper. The fifth section discusses on the methodology undertaken in this study. The sixth part which is the crux of this article, highlights the findings of the research focusing on the roles of FIU and the function of the Bar Council in ensuring the compliance of legal professionals with their AML obligations. The final section will conclude the paper.

## 2. Problem Statement

The literature on the roles of the FIUs in ensuring money laundering compliance by the legal profession is rather scarce. To date, there is very little academic research that could be found in this area as the emphasis of the regulators are on the financial institutions rather than on other professionals and businesses such as the legal practitioners. Within the global context, the literature on the role of the FIU tends to suggest that the origin of such unit was due to the FATF initiatives and Recommendations in 2003, which urged its member countries to establish a competent authority that centralized the processing of suspicions transaction reports (Demetis, 2010). Such institution is responsible as the central national agency responsible for receiving, analysing and disseminating to the competent authorities, disclosures of financial information concerning on the suspected proceeds of crime (Nguyen, 2013). In many FATF member countries FIUs was established with the primary function of mitigating the risk of money laundering and terrorist financing and they also serve as a centralized information sharing institutions among the law enforcement agencies (Alhosani, 2016). On the models of FIUs, Masciandaro & Volpicella (2014) contend that the creation of the FIUs is influenced by two models: firstly, the Judicial, Law Enforcement and the Hybrid model which focus on the implementing AML departments or office alongside the existing law enforcement systems. Secondly, the Administrative Model provides for a single agency for centralizing the receipt and assessment of financial information and sending the resulting disclosures to competent authorities.

In the United Kingdom, the literature on the role of FIU indicates that the UK Financial Intelligence Unit (UKFIU) which is situated within Serious Organised Crime Agency (SOCA) is nationally responsible for gathering, analysing and dissemination of the financial intelligence submitted through the Suspicious Activity Reports (SAR) regime. Apart from the UKFIU, the regulator of the solicitors, the Law Society and the Solicitors Regulation Authority is mainly responsible for educating, regulating and supervising their member's compliance with their AML duties. The official report indicates that the regulators in the UK are in some ways complying with their obligations under the AML regime (AML Evaluation Report UK, 2016). Such high level of compliance may be due to the perception by the authorities that money laundering is a serious crime and any participation by the legal profession can result in severe penalties. Also, the penalties may involve suspension or strike-off from the legal profession by the Solicitors Disciplinary Tribunal (SDT) (AML Evaluation Report UK, 2016).

However, in Malaysia, research into the roles of the FIU or the Malaysian Bar Council in ensuring lawyers' compliance with the AML regime is rather limited and is not as well-developed as those in the United Kingdom. The available literature tends to focus merely on the money laundering crime only (Hamin et al., 2014a; Dhillon et al., 2013; Yasin, 2015) and the investigation of money launderers under the existing legislation (Dhillon et al., 2013). Further local literature on AML had addressed the issue of compliance of financial institutions with the AML legislation (Rahman, 2013) and the statutory obligations of lawyers under the AML regime (Hamin et al., 2015a). As such, this article intends to fill in this lacuna and attempts to explore and investigate the issues of monitoring of legal practitioners' compliance with their AML obligations, which include duty to report suspicious transactions by their clients.

### **3. Research Questions**

Based on the above problem statements, the research question that this paper would address is: to what extent does the Financial Intelligence Unit and the Malaysian Bar Council monitor and supervise legal practitioners in Malaysia and ensure that the latter comply with their statutory AML obligations?

### **4. Purpose of the Study**

This paper primarily aims at filling in the lacuna in the local literature on the extent to which the FIU and the regulator of the legal profession, the Malaysian Bar Council, monitor legal practitioners' compliance with their AML duties. Towards this objective, the article seeks to provide some preliminary evidence on the perceptions of legal practitioners on the tasks undertaken by the FIU and Bar Council in monitoring their obligations under the AML regime.

### **5. Research Methods**

This study employed the qualitative type of research methodology. Such approach is chosen as it would provide a deeper understanding of the social phenomena so as to gain an in-depth, intense and holistic overview of the study (Silverman, 2016). For the purpose of this paper, the findings of this research are based on the data collection of both the primary and the secondary data which are divided into two phases. The first stage of the data collection involves reviewing all of the relevant literature,

through a library-based research, on the roles of regulators (the FIU and the Malaysian Bar Council) in monitoring legal practitioners' AML compliance. The primary source includes the Anti-Money Laundering Anti-Terrorism Financing Proceeds of Unlawful Activities Act 2001. The secondary sources that were reviewed involve textbooks, articles in academic journals, government reports, newspaper articles, and online databases. In the second phase, the primary data was generated by adopting a case study research design, involving seven units of analysis representing large, medium and small the legal firms in the Klang Valley and also the representatives from the FIUs and the Malaysian Bar Council. The instrument for the case study was face-to-face semi-structured interviews with eighteen respondents from these legal firms, involving the partners, office managers, and legal practitioners.

The semi-structured interviews have been digitally recorded, and their contents have been transcribed. The qualitative data analysis was conducted through thematic and content analyses, in which the observations of the researcher and the interview transcripts from the semi-structured interviews were examined and analysed using the Atlas.Ti qualitative research software. The process consisted of creating codes and categories, considering the themes and the respondents' experiences, along with the integration of the literature review. The primary data were triangulated with the semi-structured interview data obtained from the representatives from the Bank Negara and the Malaysian Bar Council.

## **6. Findings**

The results of this study are divided into two phases, namely the literature review stage and the fieldwork stage. The findings are as below.

### **6.1. Findings on Phase One: The International Perspectives of the AML Regulators**

The establishment of the FIU may be traced its roots back in 1990 with the first Recommendation issued by the FATF, concerning drug-related money laundering offence (FATF Annual Report, 2001). Such report called for the establishment of the competent authorities to mitigate the risk of money laundering committed via financial institutions (FATF Annual Report, 2001). Since then, the FATF recommendations have regularly been amended in 1996, 2003, 2008 and finally in 2012, which adopted the risk-based approach for all the regulators under the AML regime (Hamin et al. 2014b). The FATF was the first to introduce the word 'financial intelligence unit' in its 2003 Recommendations, which called for countries to establish a national centre for receiving, analysis and dissemination of suspicious transaction report (STR) and other information regarding potential money laundering or terrorist financing (FATF, 2003). Such FIUs should have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STRs (FATF, 2003). The roles of the FIUs under the Recommendation 26 of the FATF 2003 Recommendation is rather vague. However, under the more recent 2012 Recommendation 29, the FATF requires that member countries establish an FIUs that serves as a national centre for the receipt and analysis of the STR and other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis (FATF, 2012).

The FATF is silent on the definition of FIUs. However, Clarke (2003) defines FIUs as the central national agency responsible for receiving, analysing and disseminating to the competent authorities,

disclosures of financial information concerning suspected proceeds of crime or as required by the national law. Apart from the FATF, in 1995 the Egmont Group has also called for the creation of FIUs to foster international cooperation amongst the FIUs in eradicating and detecting money laundering (Mitsilegas, 2003). The Egmont Group serves as a forum for exchanging information on the latest expertise, capacity and trends of the said offence (Shanmugam and Thanasegaran, 2008). Sathye (2007) contends that the IMF and the World Bank recognised the importance of FIUs and hence, such bodies have provided assistance in strengthening the functions of FIUs. These bodies also have conducted assessments on FIUs to determine the whether or not the FIUs are in compliance with the FATF Recommendations. However, he also noted that such assessment is rather confined to the adequacy of the law and whether such institutions have been established (Sathye, 2007).

Before the establishment of the Financial Intelligence Unit, the risk of lawyers to money laundering has been identified. Since the revised 2003 FATF Recommendations, the legal profession has been made as one of the gatekeepers or the reporting institution in Malaysia (Hamin et al., 2015b). They now have several duties such as the reporting of suspicious transactions, conducting customer due diligence, imposing a compliance program within their institutions and finally the record keeping measures (FATF, 2012: Yasin 2015 Khoo 2012; Yahaya, 2014). Soon after being made the gatekeepers, the regulatory body for legal profession worldwide is also playing its role in ensuring that their members comply with the statutory duties under the AML regime (Tyre, 2010). Such efforts are in tandem with the recent FATF 2012 Recommendation, which states that the self-regulatory body of such DNFBPs including the legal profession should take the necessary measures to prevent criminals or their associates from being professionally accredited, or hold or being the beneficial owner of a significant or controlling interest or holding a management function. An effective, proportionate, and dissuasive sanctions in line with Recommendation 35 are available to deal with failure to comply with AML/CFT requirements (FATF 2012 Recommendation).

## **6.2. The Malaysian Regulators**

In Malaysia, the Central Bank has been appointed as the single regulator to supervise all reporting institutions and had established the FIU which is now known as the FIED (Financial Intelligence and Enforcement Division) to monitor the overall regulation and supervisory roles of AML/CFT law (Abdul Ghani, 2005). The FIU was established in August 2001 under Section 8 of the Anti-Money Laundering, Anti-Terrorist Financing and Proceeds of Unlawful Activities Act (AMLATFPUAA) 2001. Being the competent authority in monitoring such crimes, the role of the FIU includes receiving and analysing suspicious transactions report (STRs) by the reporting institutions and sharing financial intelligence with law enforcement agencies. Other functions include compiling statistics and records on compliance with the AML legislation, making recommendations to the relevant authorities and reporting institutions about their obligations and actions to be taken (Antonius, 2013). The role of the FIU also include providing training for the reporting institutions under review (Pok et al., 2014). The Mutual Evaluation Report 2015 on Malaysia indicates that the establishment of the FIU is in line with the international standards. Also, Yasin (2015) observes that in carrying out its role as the competent authority for money laundering and

terrorism financing, the Bank Negara has regularly issued guidelines for all the reporting institutions. The recently released guidelines for the legal profession was done in 2013 (Yasin, 2015).

The Malaysian FIUs has been very active in carrying out their functions, as the APG Mutual Evaluation Report on Malaysian in 2015 revealed that the FIED made use of the Egmont Group, the APG and the FATF channels to support its international cooperation. From 2009 to 2013, the Malaysian FIED made 107 requests to foreign FIUs and received 101 spontaneous disclosures. Over the same period, FIED received 284 requests and proactively shared information with foreign FIUs on 26 occasions. The pattern of fewer automatic exposures to foreign FIUs suggests more could be done to reach out to its foreign counterparts when FIED identifies a link with a foreign country (APG Mutual Evaluation Report, 2015).

Apart from the Bank Negara Malaysia, the Malaysian Bar Council which regulates all the advocates and solicitors in Malaysia has also been in working partnership with the FIED in ensuring the compliance of legal practitioners with their AML obligations (National Risk Assessment, 2013). Since 2005, the Malaysian Bar Council has issued several guidelines on compliance with the statutory obligations under the AMLATFPUAA 2001. The next part of this paper will explain the findings of the fieldwork conducted by the researcher.

### **6.3. Findings on Stage Two: Monitoring Lawyer's Compliance**

#### **6.3.1. The Role of Financial Intelligence Unit.**

The findings revealed that the FIU is indeed very vigilant in their approach to mitigating the risks of money laundering and terrorism financing. However, the findings also revealed that their attentive approach to supervision is mainly centred and concentrated on the financial institutions and the money services business, which are perceived to be at the high risk of money laundering and terrorism financing. The findings also revealed that their roles of monitoring and supervising legal practitioners seems to be less effective as compared to that of the financial institutions as the regulators tend to delegate their supervisory functions to the particular regulatory body. On that issue, an officer from the FIU stated that:

In regulating the reporting institutions...we are more concerned about the financial institutions, which posed a high risk of money laundering and terrorism financing and also on money services businesses, which are on the rise through hawala.

The officer further stated that:

"...Our AML/CFT monitoring is more on the financial institutions as 90 percent of the assets which were forfeited by the institutions itself is in the form of cash which is laundered through the financial institutions..."

The officer further stated that:

"The legal profession is not our priority. But we do cooperate with their self-regulatory body, the Bar Council, in monitoring their member's compliance."

The findings indicated that the FIU is indeed monitoring the reporting institutions for their compliance under the AML/CFT regime. However, their monitoring is concentrated on the financial institutions as such institutions are perceived to pose a very high risk to money laundering than the legal profession. Such findings confirmed Yahaya (2014) who noted that compliance with AML/CFT law and regulations in the financial institutions is crucial and that FIU has taken and will continue to take strong actions on banks that failed to comply and implement such laws and regulations. However, such institutionally-centred monitoring by the FIUs may lead to the displacement of money laundering from financial institutions to other Designated Non-Financial Business and Professionals, (DNFBPs) particularly the legal profession (Choo, 2014; Griffin, 2015).

### **6.3.2 The Role of Malaysian Bar Council**

The findings revealed that the Malaysian Bar Council, which is the self-regulatory body for the legal profession, is in some ways, monitoring their members' compliance. Such monitoring can be said at the minimal level due to the reliance on the FIUs. The control process by the Malaysian Bar Council on the legal practitioners' AML/CFT duties is exercised when their members wanted to renew their annual practicing certificates, which merely requires them to answer some tick box questions. The Bar Council representative stated that:

“We are concerned about legal practitioners' AML compliance. That's why we require them to answer several questions on their AML obligations when they apply to renew their practising certs...”

The findings also revealed that Bar Council supervisory roles include that of training their members and issuance of the AML guidelines. The same representative stated that:

“We did conduct training almost 5 to 8 times in a year, which touched upon the AML module. We also issued guidelines way back in 2005, but it has not been updated. So we tend to circulate and relies on the guidance published by the FIU of Bank Negara.”

However, the triangulation with the law firms showed that the most of the legal professionals with exception of the big law firms, were not aware of their obligations under the AML regime. Also, they were unaware of the guidelines or training provided by their self-regulatory body. Such findings verified Koh's (2013) view who contended that many legal practitioners were not aware of their AML responsibilities and neither are they aware of the training conducted by the Bar Council. One legal practitioner lamented that:

I'm not so sure what the anti-money laundering duties that we are supposed to do.

Another lawyer commented that:

“I never knew that the Bar Council had done any training for us on the anti-money laundering duties that we are supposed to comply or the guidelines they had issued...”

The evidence revealed that the FIU of Bank Negara tends to delegate their supervision duties on legal practitioners to the Malaysian Bar Council. However, for the purpose of reporting suspicious

transactions, legal practitioners are required channel such report directly to the FIU and not to the Bar Council. The evidence also revealed that the Malaysian Bar Council has been rather inefficient in guiding their members in complying with the AML/CFT regime. The lack of information on the AML training and the lack of updates of the AML guidelines issued by them for their members does not augur well for their efficiency in ensuring compliance with their AML duties.

## 7. Conclusion

In the broader analysis, the establishment of the FIU under the AML regime in Malaysia is along the lines of the FATF standard. Such standard requires member states to establish specific competent authorities for the purpose of oversight and the central processing unit for money laundering and countering terrorism financing. The Malaysian government has shifted the burden of regulating some profession or businesses to their self-regulatory bodies, including the legal profession. Such efforts are in line with the FATF 2012 Recommendation which requires member states to establish a working partnership with self-regulatory organizations in ensuring effective AML risk mitigation within the country. Within such a legal landscape of regulating the legal profession, the evidence from the study suggests that there is minimal monitoring of legal practitioners' compliance with their AML duties by the self-regulatory body and the FIED. Whatever regulation that had been made, was merely the issuance of the AML guidelines, which in the case of the Bar Council has not be updated since its original issuance in 2005. This situation may be due to the perceptions of the FIED and the Bar Council that the legal profession merely posed an average risk to money laundering as opposed to the financial institutions which are highly at risk of such crime. Hence, more efforts had been concentrated on such institutions than on the legal profession. The lack of oversight and monitoring of the legal profession by the FIED and the Bar Council may have an adverse implication for legal practitioners. Such lack of supervision has led to the situation that many lawyers are unaware of their AML obligations and had been neglecting such duties. Also, such findings seemed to confirm the official reports and the available literature mentioned above on the lack of regulatory oversight and monitoring of legal practitioners' compliance with their AML obligations.

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