

INTEGRATING EVOLVING ISLAMIC LEGAL PRINCIPLES WITH CIVIL FORFEITURE LAW TO COMBAT DIGITAL CORRUPTION IN MALAYSIA

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Abstract: *The recovery of unlawful gains via civil forfeiture is increasingly acknowledged as an effective alternative to criminal enforcement in the fight against corruption and money laundering. Nonetheless, the practice is constrained by the difficulty of satisfying the standard of proof. The technological breakthroughs that generate digital assets, like cryptocurrencies and blockchain, exacerbate the issue. These digital assets' anonymity, pseudonymity, and transnational attributes enable offenders to conceal illicit assets, complicating asset tracing and recovery efforts. Islamic law permits the forfeiture of unlawful gains. Scholars offer insights on the justification for reversing the onus of proof to address the challenges associated with meeting the standard of proof, akin to the principle of presumption. The paper examines the difficulties in recovering unlawful gains from corruption and money laundering under the civil forfeiture law in the Malaysian Anti-Corruption Commission Act 2009 (MACC Act) and the Anti-Money Laundering, Anti-Terrorism Financing And Proceeds of Unlawful Activities Act 2001 (AMLA). It explores how the Islamic legal principle of reversing the onus of proof can be applied to enhance enforcement effectiveness concerning digital assets. It also suggests an alternative mechanism for recovering unlawful corruption assets related to digital transactions. The paper utilises a qualitative study, employing a doctrinal approach and a library-based*

method, to lay the groundwork for the research. The data were classified into themes and examined through content and thematic analysis. The government and policymakers may need to undertake legal reforms aligned with Islamic legal principles to strengthen the civil forfeiture in recovering unlawful gains associated with corruption and money laundering. The paper's findings facilitate the revision of quotidian practices and the legislative framework of civil forfeiture in Malaysia.

Keywords: *Unlawful gains, Civil forfeiture, Digital assets, Corruption, Money laundering, Reverse onus of proof*

Introduction

Corruption is a primary global concern, defined as “the abuse of entrusted power for private gain” (Chandrashekhar & Barrington, 2011). An estimated cost of around five per cent of the world's gross domestic product (GDP) has been lost to corruption, according to the United Nations and the World Economic Forum (Global Financial Integrity, 2019; Global Infrastructure Anti-Corruption Centre (GIACC), 2024; Satar, 2025). In the last 26 years, Malaysia has incurred financial losses of almost RM4.5 trillion due to corruption and leakages (Hussin, 2023). From 2018 to 2023, the losses totalled RM277 billion (Harun, 2024). Corruption encompasses or significantly overlaps with money laundering (Keremis, 2020). Malaysia ranks in the top ten most appealing countries for money launderers seeking to legitimise illicitly acquired assets (Wahaj Ahmed Khan et al., 2021). The U.S. Global Financial Integrity (GFI) investigation in 2019 on illicit financial flows, including those stemming from corrupt activity associated with 148 developing nations from 2006 to 2015, discovered substantial illegal outflows worldwide (Global Financial Integrity, 2019; Kader, 2021). Malaysia has lost ranging from US\$22.9 billion (RM94.22 billion) to US\$33.7 billion (RM138.66 billion) over this timeframe (Global Financial Integrity, 2019; Kader, 2021).

Corruption and money laundering attract criminal and civil sanctions. Under the civil mechanism in Malaysia, authorities can confiscate or forfeit assets connected to corruption and money laundering. The Malaysian Anti-Corruption Commission (MACC) reported that, as of August 2025, RM28 billion in assets associated with corruption-related activities had been forfeited during the past five years (Malay Mail, 2025), a stark contrast to the RM277 million losses. Recovery of illegal assets under the Malaysian Anti-Corruption Commission Act 2009 (MACC Act) and the Anti-Money Laundering, Anti-Terrorism Financing And Proceeds of Unlawful Activities Act 2001 (AMLA) requires proof of the corruption offence, the link between the corruption offence and the act of abetment (Abdul Raof & Abdul Aziz, 2024). Fulfilling the standard of proof for all these elements is challenging (Olujobi, 2021). The complexity of financial flows, with cross-border transactions and the fungibility of money, renders the proceeds of corruption indistinguishable from lawful payments (Harvey, 2020).

The recovery of digital assets applies the existing civil forfeiture mechanism. Digital assets are intangible, stored digitally, can be used to realise value, owned, transferred, (Pranevičienė et al., 2025) or traded over the internet or digital networks (DeFi Planet, 2025). Numerous terms describe digital assets, such as crypto-asset, cryptocurrency, digital currency, virtual asset, virtual currency, or virtual money (Asian Development Bank, 2024). Digital assets are issued, recorded, and transferred using a decentralised ledger technology called blockchain (Yermack, 2017). Digital assets are gaining popularity in Malaysia, with a forecast of 4.09 million users

by the end of 2025 (Fakunle, 2025). Bitcoin, Tether, Ripple, and Ethereum are among the types of cryptocurrencies (Van der Auwera et al., 2020). Cryptocurrencies provide financial inclusion for those without traditional banking access, enabling participation in the global economic system through smartphones and internet connections (Goldbarsht, 2024). They facilitate transactions, savings, and investments in digital assets, bypassing intermediaries. Additionally, cryptocurrencies enhance the efficiency and convenience of cross-border transactions by enabling near-instantaneous transfers with lower costs than traditional methods, which are often slow, expensive, and restrictive (Goldbarsht, 2024; Kaiser, 2016).

The growth of digital assets has raised concerns about regulation and security (Goldbarsht, 2024). The anonymity, pseudonymity, and transnational attributes of these digital assets enable offenders to conceal illicit assets more easily and speedily compared to other types of assets, further complicating the processes of asset tracing and recovery. A prominent blockchain analysis firm reported that in 2022, approximately \$31.5 billion in cryptocurrencies were laundered (Zhou, 2025). Notably, even during the crypto winter of 2023, this amount remained significant at \$22.2 billion (Zhou, 2025). Governments and regulatory agencies are pushed to develop frameworks that safeguard consumers, curb money laundering, and handle the hazards associated with digital assets (Goldbarsht, 2024). Reforming the law may be required to recover the digital assets used illegally to hide and launder corrupt gains.

In Islam, the burden of proof in initiating the case or disagreement in the Islamic judicial system, as unanimously agreed upon by the Muslim jurists, is on the plaintiff in civil matters and the prosecution in criminal cases (Nawang et al., 2018). Islamic law jurists have opined that there are exceptions in which the burden of proof may be shifted (Dawood, 1993; Nawang et al., 2018). In Islamic law, the reverse onus of proof system is classified as *ta'zir*, which is based on government policy (*ulul amri*) (Dawood, 1993). It is essential to apply the principle of reverse onus of proof under Islamic law in instances where establishing the burden of proof is challenging due to insufficient or difficult-to-gather evidence, as this is believed to aid law enforcement in cases of corruption and money laundering (Muhammad Hatta, Sumiadi & Afrizal, 2021). Consequently, this paper aims to (i) investigate the potential of reversing the onus of proof in Islam to enhance the efficacy of enforcement in the context of digital assets, and (ii) suggest an alternative approach to the recovery of unlawfully corrupt assets associated with digital transactions.

Literature Review

Past studies on the definition of corruption and money laundering can be summarised that, although there is no single universal definition of corruption which can be located (Mallow, 2022) in the scientific and professional literature, as it is a multidisciplinary legal and social phenomenon that exists in all countries (Abdullah & Said, 2016), corruption can be said to comprise giving, offering, receiving or soliciting, whether directly or indirectly, anything valuable to influence improperly the actions of another party (Abdullah & Said, 2016). Money laundering is the process whereby proceeds from illicit activities undergo a transformation ("laundered") so that, at the end of the laundering process, they appear to have been derived from legitimate activities (Parlimen Malaysia, 2014). According to Shehu, corruption is not only a predicate offence for money laundering, but it is also the most significant hindrance to executing anti-money laundering measures; thus, it both causes and shields money laundering (Shehu, 2014). Research has been undertaken on civil forfeitures related to the disposition of illicit assets. Many agreed that illegal assets can be recovered via civil forfeiture (Nwosu-Iheme,

2021) with the rationale that criminals should not be permitted to profit from their crimes, or in other words, “crimes should not pay” (Jensson, 2011).

Nevertheless, the recovery of tainted assets under Section 41 of the MACC Act and Section 56 of the AMLA faces the hurdle of obtaining sufficient credible evidence to meet the required standard of proof (Abdul Raof & Mohd Sulaiman, 2023). Court cases, such as *Public Prosecutor v Sim Sai Hoon* (2020) 6 CLJ 760 and *Pendakwa Raya v Habib Jewels Sdn Bhd* [2020] MLJU 897, are testament to this fact (A. Rahman, 2022). In the former, the money related to the offence was no longer in the account, which frustrates the civil forfeiture application. In the latter, the original offence was not proven.

The emergence of digital assets added a new obstacle to civil forfeiture activities. Unlike traditional currencies, cryptocurrencies are not issued by a government financial institution, which indicates a higher danger of economic insecurity, fraud, and increased financial crime (Guidara, 2022). Individuals engaged in bribery and corruption will persistently attempt to utilise cryptocurrencies to perpetrate offences and launder their illicit activities (Guidara, 2022; Kethineni & Cao, 2020), with their distinctive characteristics disguising illegal origins of funds and complicating tracing. Zhou (Zhou, 2025) and Rais (Rais, 2022) stated that money laundering often comprises multiple steps tailored to digital assets. Firstly, placement, where criminal gains are converted to digital assets, and where the illicit capital is integrated into the cryptocurrency ecosystem via exchanges, peer-to-peer networks, or Bitcoin ATMs that may not enforce rigorous identification verification. Next is layering, which refers to obscuring blockchain transactions, where digital assets are swiftly moved between many wallets or exchanged for other tokens to obscure transaction trails and origins. Finally, integration involves the reconversion of digital assets into fiat money to legitimise such funds, where laundered funds re-enter the conventional financial system, masquerading as genuine digital asset gains or through conversion to fiat currency via cryptocurrency exchanges or over-the-counter services.

Some studies stated that forfeiting corrupt and laundered assets presents significant challenges, and the complexities of digital assets increase. The emergence of the digital economy and the growing utilisation of cryptocurrencies and other digital assets have rendered conventional methods of confiscation and anti-money laundering insufficient (Goldbarsht, 2024). Prosecutions and investigations of money laundering offences related to digital assets are complex, particularly due to the widespread use of tumblers (services that integrate illicitly obtained digital assets with legitimate ones to conceal the source), decentralised finance protocols (decentralised finance, or 'DeFi', refers to a range of blockchain-based financial applications) and solutions that utilise automated smart contracts. Prominent instances comprise decentralised digital asset exchanges (DAXs) and various 'stablecoins', which are digital assets linked to a reserve asset, and privacy-focused technologies (technologies like zk-SNARK and ring signature cryptography are employed to anonymise blockchain transactions), which obscure blockchain transactions during the placement and layering stages (Rais, 2022).

Malaysia has designated DAXs and initial exchange offering (IEO) operators as reporting institutions (Rais, 2022). These institutions are required to implement stringent measures to prevent the reintegration of illicit digital assets in accordance with the AMLA, the Sector 6 Policy issued by Bank Negara Malaysia pursuant to Section 83 of the AMLA, and the AML Guidelines (Rais, 2022). Imposing customer due diligence procedures (CDD) and reporting obligations on DAXs and IEO operators has significantly increased the difficulty for criminals

to convert digital assets into fiat money without being detected by regulators and law enforcement agencies (Rais, 2022). Nevertheless, the Sector 6 Policy and AML Guidelines do not require implementing blockchain analytics tools, despite the widespread use of technologies that can obfuscate digital asset transactions and complicate tracing their sources (Rais, 2022). It is also comparable to manoeuvring an intricate web filled with stringent-but-convoluted requirements to comply with the Sector 6 Policy and AML Guidelines, as the inconsistencies between the provisions of both instruments render compliance difficult (Rais, 2022).

In Islam, reversing the onus of proof in corruption cases appears justified (Dawood, 1993). The onus may transfer to the accused, who has greater insight into the sources of purported illicit wealth, to establish their innocence (Suaib et al., 2020). Malaysian Syariah courts have implemented burden-shifting methods in civil and criminal cases to provide equitable processes in accordance with Syariah evidence legislation (Saifuddin & Tajuddin, 2024). This methodology aligns with the overarching Islamic legal concepts of tranquillity, order, and social security, which validate the reversal of the onus of proof in instances where establishing facts is intrinsically challenging (Dahwal & Sh, n.d.).

Past studies often suggest that the Unexplained Wealth Order (UWO) is an alternative civil forfeiture mechanism practised in jurisdictions such as the United Kingdom (UK) (Abdul Raof & Mohd Sulaiman, 2023; Hoseini, n.d.). In the UK, the UWO is designed to enable the recovery of illicit assets when authorities cannot utilise regular freezing or recovery techniques due to a lack of adequate evidence (Lovejoy, 2021). The UWO mandates that individuals provide a detailed explanation of the nature and extent of their interest in the property and how they acquired it (S.Yakubu, 2017). Non-compliance with the UWO establishes a rebuttable presumption that the related assets are derived from criminal activity (Dornbierer & Simser, 2022) and constitutes unexplained wealth unless the respondent demonstrates otherwise (S.Yakubu, 2017).

According to Ulfsdotter (Ulfsdotter, 2012), courts in Australia and internationally have recognised the necessity and rationale for a reverse onus provision in confiscation laws, acknowledging the challenges associated with identifying proceeds of crime. Four practical factors have been identified to justify the reverse onus of proof. Firstly, there is no direct evidence concerning the origin of proceeds from criminal activities. Secondly, the ease with which the illicit origin of criminal proceeds can be concealed or disguised through money laundering has increased, particularly as a result of globalisation and advancements in technology. Thirdly, details regarding the property acquisition, including the source of funds utilised for the purchase, are likely to be uniquely known to the individual who acquired the property. Fourthly, the general principle is that a lawful property owner should be able to demonstrate that their interest in the property was acquired legally.

Looking into the reverse onus of proof in Malaysia, in civil cases, the plaintiff has a legal burden to prove a case against a defendant, and the defendant has the evidential burden to raise sufficient evidence when the plaintiff has successfully discharged his burden (Omar et al., 2015). A presumption is a rule of law which provides that if a party proves a particular fact (known as a primary fact), then another fact (the presumed fact) will also be taken to be proved, unless the opponent adduces evidence to rebut the presumption (Glover & Murphy, 2013). The Court is not granted any discretion to decline to invoke the fact; instead, it must presume the fact as proven until it is disproven (AZAHAR & DIRECTOR, 2018). A statutory presumption reverses the onus of proof (Nawang et al., 2018). Legal presumptions do not absolve the

claimant from presenting evidence; instead, they alleviate the burden of proof (Hoseini, n.d.). When a legal presumption favours the claimant, the burden of proof is not transferred from the claimant to the defendant; instead, it is alleviated to prevent the claimant's claim from encountering insurmountable challenges (Hoseini, n.d.).

Previous literature emphasises methods to combat the laundering of criminal funds via cryptocurrencies by technological interventions (Goldbarsht, 2024; Kabra & Gori, 2025; Zhou, 2025). Limited literature examines the strategies to combat corruption and the laundering of digital assets through the lens of Islamic legal concepts. The government and policymakers may need to enact legal reforms aligned with Islamic legal principles to improve civil forfeiture in recovering illegal gains associated with corruption and money laundering, encompassing digital and other asset types. The study's findings enable modifying existing procedures and the legal framework for civil forfeiture in Malaysia to confiscate all illicit assets.

Method

This study adopts qualitative methods using exploratory and fundamental approaches to laws governing civil forfeiture of corrupt assets in Malaysia. This forms the foundation for the study. Literature reviews were carried out to identify a researchable topic. The research utilises primary sources from Al-Quran and hadith, relevant statutes and judicial decisions and is substantiated by the analytical review of the literature. The study conducted a content analysis approach on two main statutes: the MACC Act and the AMLA. The findings were later corroborated with the secondary data from legal journals, textbooks, theses, reports, and data acquisition from internet networks. Both primary and secondary data from the library were triangulated and analysed using content and thematic analysis. The methodology entailed the extraction of themes from the collected data, as well as the establishment of codes and categories. Several themes and coding were used in the analysis, including the statutory literal provision on civil forfeiture of corrupt assets, reverse onus of proof under the Islamic law, concept of digital assets and challenges of digital assets.

Findings

The discussion section concentrates on six themes, as depicted below.

Corruption and money laundering

The United Nations Convention against Corruption (UNCAC) 2003, which is considered by many as the only legally binding universal anti-corruption instrument and which Malaysia became a state party to in 2008, did not provide any clear definition of the word “corruption” (Mallow, 2022). Under the MACC Act, “gratification” is associated with corruption. Gratification includes monetary and non-monetary bribes (Section 3 of the MACC Act). The four main categories of corruption offences under the MACC Act are soliciting or receiving gratification under Section 16 & 17(a) of the MACC Act, offering or giving gratification under Section 17(b) of the MACC Act, intending to deceive (providing false claim under Section 18 of the MACC Act, and using office or position for gratification (abuse of power/position) under Section 23 of the MACC Act. Section 4(1) of the AMLA states that a money laundering offence involves the engagement, acquisition, removal or concealment of proceeds of an unlawful activity. Hence, money laundering is principally concerned with the proceeds from illegal activity, that is, any activity which is related, directly or indirectly, to any serious offence or any foreign serious offence (*Public Prosecutor v Kuala Dimensi Sdn Bhd & Ors* [2018] 6 MLJ 37). The AMLA included digital assets in its definition of “proceeds of unlawful activity” by defining it as “assets of every kind, whether corporeal or incorporeal... tangible or intangible,

however acquired...”(*Johnathan Wong Futt Po v Koh Chin Wei & Anor* [2024] MLJU 2925). A significant number of crimes associated with digital assets, such as digital asset fraud, hacking, the sale of illicit goods, and the financing of terrorism, clearly fall under the definition of “unlawful activity” as outlined in Section 3 in conjunction with the First Schedule of AMLA (Rais, 2022).

Civil forfeiture under Section 41 of the MACC Act and Section 56 of the AMLA

Section 41 of the MACC Act and Section 56 of the AMLA permit civil forfeiture of assets associated with corruption offences under the MACC Act or money laundering offences under the AMLA. Civil forfeiture cases emphasise courts' careful evaluation of evidence, emphasising sufficiency and admissibility. In *Mohd Arif bin Ab Rahman v Pendakwa Raya* [2020] MLJU 1115, the prosecution failed in the forfeiture bid under Section 41 of the MACC Act because the prosecution's documentary evidence was insufficient. In *Pendakwa Raya v Habib Jewels Sdn Bhd* [2020] 12 MLJ 757, the High Court dismissed the application for forfeiture, as the prosecution did not succeed in proving the commission of the predicate offence. In the Federal Court's case of *Public Prosecutor v Kuala Dimensi Sdn Bhd & Ors* (2021) 2 MLJ 469 [2021] 2 MLJ 469, the prosecution also did not show documentary evidence that the properties were procured from the proceeds of any illegal activity. Hence, the civil forfeiture application under Section 56 of the AMLA did not succeed.

Digital assets

Digital assets are included in the definition of “property” under Section 3 of the MACC Act and Section 3 of the AMLA. Cryptocurrencies are digital assets universally accepted as money (*Lee Ee Foong v Ong Seow Lee* [2025] 10 MLJ 230). When real money is used to purchase the cryptocurrency, it is a commodity (*Lee Ee Foong v Ong Seow Lee* [2025] 10 MLJ 230). In Malaysia, it has been established in *Robert Ong Thien Cheng v Luno Pte Ltd & Anor* [2019] 1 LNS 2194 that cryptocurrency is not money (i.e. legal tender) but is a form of security under Section 3 of the Capital Markets and Services (Prescription of Securities) (Prescription of Securities) (Digital Currency and Digital Token) Order 2019. The digital currency is any currency held in digital form and/or there is no physical form and only exists online, where cryptocurrency refers exclusively to digital currency that is based on the blockchain storage format (*Chen Yook Bee & Ors v Neurogine Capital (L) Ltd & Ors* [2022] MLJU 1860). Digital assets are under the purview of the Securities Commission Malaysia (Gan, 2025). Hence, cryptocurrencies are not formally recognised as a means of payment (Securities Commission Malaysia, 2025), but they are not illegal (*Johnathan Wong Futt Po v Koh Chin Wei & Anor* [2024] MLJU 2925).

Cryptocurrency works in the virtual world through the *Blockchain.com* platform, where an e-wallet account is created and cryptocurrency can be transferred from one e-wallet account to another (*Adan bin Ibrahim v Mustaffa bin Mohd Som & Anor* [2020] MLJU 1551). Even though cryptocurrency is not legal tender in Malaysia and the payment was not through a commercial bank, digital currencies could be considered as valuable consideration under the Contracts Act 1950 (*Johnathan Wong Futt Po v Koh Chin Wei & Anor* [2024] MLJU 2925 and *Lee Ee Foong v Ong Seow Lee* [2025] 10 MLJ 230). Based on the Decision of the Selangor State Fatwa Committee Meeting which convened on 8 Muharram 1443H corresponding to 17 August 2021, and decided on the *Law of Cryptocurrency: A Sharia Analysis, business and transactions related to Bitcoin*, cryptocurrencies are “HARUS” if the parties conducting the transaction could ensure that the matters within the stated parameters were complied with (*R bt MR v MN bin MN* [2025] 2 SHLR 9).

Reverse onus of proof under the Islamic law perspective

While there is no definitive evidence of a reverse onus of proof system in Islamic criminal law, certain verses in the Al-Qur'an suggest its feasibility. The most remarkable judicial occurrence concerning the reversal of the onus of proof is the matter of adultery claims made by Zulaikha against the Prophet Yusuf (a.s.) in Surah Yusuf (12: 26-29), as follows:

Yusuf said, "She tried to tempt me to have her way." Someone from the woman's family there gave their opinion and said, "If Yusuf's shirt is torn at the front, then the woman's accusation is true and Yusuf is lying. However, if the shirt is torn at the back, the woman lies, and Yusuf is telling the truth." When her husband saw that Yusuf's shirt was torn at the back, he said, "This is clearly your trickery, women; your trickery is powerful." (Dawood, 1993; Suaib et al., 2020)

Under Islamic law, the reversal of the onus of proof is accepted by the majority of scholars, including Shafiite, Maliki, Hanbali, and Shiite, based on the hadith, which states:

"But the weight of proof is on the claimant, and the swearing of an oath is on the one who denies (the charge)" (Nawang et al., 2018)

A rebuttable presumption of law exists in the Syariah Court Evidence Enactment, where Section 4(2) states: (2) *Whenever it is provided by this Enactment that the Court shall presume the existence of a fact, it shall regard the fact as proved unless and until it is disproved* (Saifuddin & Ali Tajuddin, 2024). According to Saifuddin et al, when the Court is directed to make a presumption as specified in the section, it must do so. However, this presumption can only be made after the underlying facts have been proven (*Muhammed Hassan v Pendakwa Raya* [1998] 2 MLJ 273). If such a presumption is made, the accused must prove otherwise. If the accused fails to rebut the presumption, the presumption persists, and the accused may be convicted of the offence (Saifuddin & Ali Tajuddin, 2024).

Unexplained wealth order (UWO)

The UWO is a civil forfeiture mechanism to detect unexplained wealth (Brun et al., 2023). The UWO is a supplementary mechanism to address organised crime and various criminal activities. It is defined as legislation establishing a presumption that an individual's assets are derived from criminal activities, thereby requiring that individual to clarify the lawful sources of their wealth (Booz et al., 2011). UWOs facilitate the challenge of establishing a connection between assets and corruption by allowing courts to interpret inadequate responses as presumptive or circumstantial evidence of the property's unlawful origin (Brun et al., 2023). The UK, Australian and Irish UWO regimes contain a reversal of the onus of proof by requiring the respondent to the proceedings to explain the lawful source of the specified property (Reurts, 2017).

The UWO was implemented in the UK to remedy the limitations of the civil recovery order, which permits the recovery of proceeds from crime (Abdul Raof et al., 2021). Several requirements must be satisfied before the High Court issues an order (Section 362B of the Proceeds of Crime Act 2002). There is sufficient reason to believe that the respondent possesses the property. The property value exceeds £50,000. There are plausible reasons to believe that the respondent's legally obtained income is inadequate to purchase the property. The UK Government asserts that the effects on individual rights resulting from the UWO are justified and proportionate to the objectives of preventing and detecting serious crime, particularly regarding utilising assets in the UK for money laundering (legislation.gov.uk, 2022).

Reverse onus of proof in Malaysia

In Malaysia, there are exceptions to the general rule that an accused bears no onus of proof. For example, Section 106 of the Evidence Act 1950 provides, “When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him”. This section is intended to address exceptional circumstances in which it would not be possible or challenging for the first party to prove a fact that is only known to the second party, or which can be accessed by the second party with relative ease but cannot be accessed by the first party without considerable difficulty.

Once the prosecution has made out a *prima facie* case, an accused has the onus to prove the special exception in the statute (*Abdul Razak bin Dalek v PP* [2010] 4 MLJ 725. The Federal Court in *Public Prosecutor v Gan Boon Aun* [2017] 3 MLJ 12 determined that the reverse onus of proof is valid and constitutional, asserting that such clauses represent an exception to the general principle that the accused does not bear the burden of proof. The Federal Court highlighted the common justifications for shifting the burden of proof, such as necessity and the law's legitimate purpose in serving the public interest. While altering the burden of proof may infringe upon the presumption of innocence, it is essential to consider the overarching interests of the community.

Discussion

The discussion section addresses four key points, outlined below.

Difficulty in recovering corrupt proceeds under civil forfeiture

Section 41 of the MACC Act and Section 56 of the AMLA allow forfeiture of illegal assets, where confiscated funds must derive exclusively from criminal activity, the link between the predicate offence and proceeds must be proven on a balance of probabilities, and there must be a proof of abetment. Disruption in the money trail makes establishing the origin challenging. In the case of a disruption in the continuity of funds or if they have been spent or mixed with other funds within the account, it becomes difficult to demonstrate that the seized assets came from unlawful activities or the underlying offence (Abdul Raof & Abdul Aziz, 2024). The emergence of the digital world allows these assets to be disbursed and transacted using digital platforms. Digital assets significantly complicate the financial trail, creating obstacles in reclaiming corrupt proceeds. The characteristics of digital assets make the identification and tracking of corruption and money laundering activities a constraint, due to the following reasons:

Not a legal tender

As digital assets are not legal tender, they risk slipping outside the stringent regulatory systems that control traditional currencies and financial products. This regulatory gap makes it more difficult for authorities to monitor transactions, identify suspect activity, and effectively enforce compliance. In this respect, the High Court in *Johnathan Wong Futt Po v Koh Chin Wei & Anor* [2024] MLJU 2925 stated as follows:

“Though the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Amendment to the First & Second Schedule) Order 2017 had designated the operators of digital assets exchanges, i.e. those that offer services of converting digital currency into fiat money, fiat money into digital currency and digital currency into other types of digital currency, as “reporting institutions” under AMLA, it is an inherently formidable task to enforce the law in this area because such transactions could be conducted online without going through any licensed

bank in Malaysia. There is a stark contrast with the traditional mode of payment for the sale of goods in Malaysia, which has been the currency of Malaysia, i.e. Ringgit Malaysia, issued by Bank Negara Malaysia, our central bank, recognised by our law to be legal tender for the value stated. Foreign currencies have been used for international trade, but they have always been the currency of a sovereign state. Taking the facts of this case as an example, if not for the dispute between the Plaintiff and the 2nd Defendant ending up as a civil suit in this Court, the sale of those two cars in September 2021, which was conducted by way of a cryptocurrency transfer of USDT 596,137.34 as payment for two cars, would have remained unknown. The government could collect no stamp duty or sales tax for the transaction because it was hidden from the Inland Revenue Board and the Customs and Excise Department.”

The judgment highlights that under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Amendment to the First & Second Schedule) Order 2017, operators of digital asset exchanges (providing services such as cryptocurrency–fiat conversions and crypto-to-crypto trades) are formally recognised as "reporting institutions" under the AMLA. This designation reflects the legislature's intent to regulate cryptocurrency-related financial activities within Malaysia's anti-money laundering and counter-terrorism financing (AML/CTF) regime. Despite this legal framework, the Court underscores the practical difficulties of enforcement. Cryptocurrency transactions can occur online outside the oversight of licensed banks in Malaysia, making them difficult to trace, regulate, or subject to compliance monitoring. This feature differentiates cryptocurrency from traditional financial systems that rely on centralised banking institutions.

Anonymity and Pseudonymity

Anonymity in the cryptocurrency world makes the transactions almost unverifiable. There was no name of payer or payee, just a long string of alphabets and numbers (*Johnathan Wong Futt Po v Koh Chin Wei & Anor* [2024] MLJU 2925). Utilising mixing services and anonymity-enhanced cryptocurrencies (i.e., privacy coins) might render the virtual monetary trail challenging to track (Zhou, 2025). The blockchain is pseudonymous; only the wallet number can be tracked (KPMG, 2021). Numerous digital assets are utilised on decentralised blockchain networks, where users conduct transactions under pseudonymous addresses rather than verified identities. Ownership traces are obscured, making it challenging to associate transactions with corrupt individuals or entities (Yermack, 2017).

Cross-jurisdictional challenges

Digital assets swiftly and effortlessly cross national borders (Zhou, 2025). Digital assets like Bitcoin or USDT operate on decentralised, global networks. Unlike money held in a domestic bank, they can be transferred instantly across borders without going through centralised intermediaries, making it difficult for any jurisdiction to assert control. Enforcement agencies have difficulty collaborating across jurisdictions where digital asset regulations differ significantly, delaying asset recovery and impeding effective tracing of illicit revenues. A court order in Malaysia (for example) has limited effect if the digital assets are stored in an exchange or wallet in another country, especially if that jurisdiction does not recognise or prioritise foreign confiscation requests.

Decentralised and encrypted

Digital assets are transacted through blockchain technology, which ensures secure and transparent monitoring and verification of transactions based on the underlying cryptocurrency, notably without the necessity for a central authority, such as a central bank. The database operates on a decentralised and encrypted framework, documenting each transaction and ensuring partial visibility to all network participants. Cryptographic techniques employed in blockchain technology guarantee that recorded data remains immutable and cannot be modified or removed subsequently, rendering the information stored within the blockchain reliable and resistant to forgery (Pranevičienė et al., 2025). Although it is possible to track any on-chain transaction back to the originating user and readily examine the transaction history of a specific wallet address, a decentralised and encrypted database complicates the identification of asset owners and the tracking of illicit activities (Goldbarsht, 2024).

Reversal of the onus of proof under the Islamic law perspective

The principle of the reverse onus of proof is essential in Islamic law when the burden of proof is onerous due to a lack of or difficulty in gathering evidence. This principle is believed to be capable of assisting law enforcement in establishing the guilt of the culprits in cases involving criminal corruption and money laundering (Muhammad Hatta, Sumiadi & Afrizal, 2021).

Reverse onus of proof in Malaysia

The reverse onus of proof operates through a rebuttable presumption. A reverse onus clause, where an enactment provides that a particular fact is presumed or deemed to exist “unless the contrary is proved”, as in the Malaysian Anti-Corruption Commission Act 2009, Customs Act 1967, Police Act 1967, Arms Act 1960, and Dangerous Drugs Act 1952, is an exception to the general rule that an accused bears no onus of proof (*PP v Gan Boon Aun* [2017] 4 CLJ 41).

One example of a provision which creates a statutory presumption in Malaysia, which reverses the onus of proof upon successful establishment of facts by the prosecution beyond a reasonable doubt or plaintiff on the balance of probabilities, is section 114A of the Evidence Act 1950. During the tabling of the amendment of Section 114A of the Evidence Act 1950 on 18.04.2012, the Hansard of the House of Representatives revealed that the objective was to alleviate problems and weaknesses in cybercrime activities on the internet. One of the main aims was to tackle the issue of internet anonymity (*Pegum Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor* [2021] MLJU 242).

UWO mechanism

Judicial decisions in Malaysia highlighted the difficulty of obtaining adequate evidence from the prosecution in civil forfeiture cases. Thus, the practice of the UWO can enhance the current civil forfeiture legal framework, requiring the respondent to demonstrate the legitimacy of their digital assets through a reverse onus mechanism. Currently, 15 UWOs have been issued in the UK (Unexplained Wealth Orders in the UK: What Will This Year Bring?, 2025). The UWO concept aligns with the Islamic principle of the reverse onus of proof. Restricting the legal frameworks of civil forfeiture may lead to Malaysia missing the opportunity to seize proceeds from digital corruption due to a lack of adequate evidence.

Conclusion and Recommendations

Innovative responses that integrate sound legal principles with technological comprehension are necessary to address the challenges of digital corruption and money laundering. The Islamic rule of law's adaptability through scholastic *ijtihad*, which is characterised by its dynamic

nature, provides valuable legal tools to bolster Malaysia's civil forfeiture laws and complement contemporary corruption and anti-money laundering regulations. The Islamic law concept recognises the reverse onus of proof mechanisms to address evidentiary challenges and, thus, as a means of advancing the public interest.

However, it is imperative to adhere to the principle of proportionality, where the protection of fundamental liberties and the community's general interest must be balanced. The respondent is entitled to prove matters that the prosecution would be highly unlikely to be able to know and that they may find difficult, if not impossible, to dispute. The information regarding digital assets necessitates specialised knowledge and technical expertise, which is exceedingly challenging to prove. The absence of a single trace will render the civil forfeiture application fatal. The reverse onus mechanism under the civil forfeiture concept has been implemented in the UWO in numerous contemporary jurisdictions.

Implementing a reverse onus of proof method in civil forfeiture for corrupt assets, both physical and digital, aligning with Islamic scholars' views, can help the prosecution identify and pursue corrupt assets. In some cases, there may be reasonable grounds to believe that assets were obtained corruptly, but the prosecution lacks the evidence to prove the same. Corruption and money laundering are often carried out quietly and covertly. Prosecutors may struggle to establish all relevant facts in their cases. The prosecution can use the reverse onus of proof to compel the property owner to provide information about the origin of the assets, which may help them quickly decide whether to pursue civil forfeiture and serve justice. The integration of advanced digital asset governance, statutory reforms, and evolving Islamic legal frameworks has the potential to substantially contribute to the fight against corruption and money laundering in the digital era, as well as to enhance the recovery of unlawful gains and reinforce legal enforcement.

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