

Combating Money Laundering and Inroads into Banking Secrecy: Evidence from Malaysia

Authors : Aspalella A. Rahman

Abstract : It is widely accepted that the investigation of money laundering and the tracing and confiscation of criminal proceeds have intruded into the principles of banking secrecy. The inroads into banking secrecy present serious threats to democracy, and more importantly, to the traditional banker-customer relationship. It is generally accepted that the fight against money laundering is in conflict with the secrecy rule. Banking secrecy is a customer privilege whereas combating crime is critical for public safety and security. Indeed, achieving a proper balance is a desirable goal. But how we go about achieving such a balance is a question encountered by many law enforcement authorities. Therefore, this paper examines the effect of disclosure under the Malaysian anti-money laundering laws on the traditional duty of banks to keep the customer's information confidential. It also analyzes whether the Malaysian laws provide a right balance between a duty to keep customer's information secret and a duty to disclose such information in the fight against money laundering. On closer inspection, it is submitted that the Malaysian laws provide sufficient safeguards to ensure that the disclosure of customer's information is carried out in a manner that is not prejudicial to the interest of legitimate customers. This is a positive approach that could protect the innocent customers from being mistreated by the law. Ultimately, it can be said that the growing threat of global money laundering and terrorism makes the overriding of banking secrecy justified because without a flow of information from the banks, the effective prevention of the menace is not possible.

Keywords : anti-money laundering law, banker-customer relationship, banking secrecy, confidentiality, money laundering

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