

Table Of Content

Journal Cover 2

Author[s] Statement 3

Editorial Team 4

Article information 5

 Check this article update (crossmark) 5

 Check this article impact 5

 Cite this article 5

Title page 6

 Article Title 6

 Author information 6

 Abstract 6

Article content 7

ISSN (ONLINE) 2598 9928



INDONESIAN JOURNAL OF LAW AND ECONOMIC

**PUBLISHED BY
UNIVERSITAS MUHAMMADIYAH SIDOARJO**

Originality Statement

The author[s] declare that this article is their own work and to the best of their knowledge it contains no materials previously published or written by another person, or substantial proportions of material which have been accepted for the published of any other published materials, except where due acknowledgement is made in the article. Any contribution made to the research by others, with whom author[s] have work, is explicitly acknowledged in the article.

Conflict of Interest Statement

The author[s] declare that this article was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

Copyright Statement

Copyright © Author(s). This article is published under the Creative Commons Attribution (CC BY 4.0) licence. Anyone may reproduce, distribute, translate and create derivative works of this article (for both commercial and non-commercial purposes), subject to full attribution to the original publication and authors. The full terms of this licence may be seen at <http://creativecommons.org/licenses/by/4.0/legalcode>

Indonesian Journal of Law and Economics Review

Vol 19 No 2 (2024): May

DOI: <https://doi.org/10.21070/ijler.v19i2.1050>

Article type: (Intellectual Property Right)

EDITORIAL TEAM

Editor in Chief

Dr. Wisnu Panggah Setiyono, Universitas Muhammadiyah Sidoarjo, Indonesia ([Scopus](#)) ([Sinta](#))

Managing Editor

Rifqi Ridlo Phahlevy, Universitas Muhammadiyah Sidoarjo, Indonesia ([Scopus](#)) ([ORCID](#))

Editors

Noor Fatimah Mediawati, Universitas Muhammadiyah Sidoarjo, Indonesia ([Sinta](#))

Faizal Kurniawan, Universitas Airlangga, Indonesia ([Scopus](#))

M. Zulfa Aulia, Universitas Jambi, Indonesia ([Sinta](#))

Sri Budi Purwaningsih, Universitas Muhammadiyah Sidoarjo, Indonesia ([Sinta](#))

Emy Rosnawati, Universitas Muhammadiyah Sidoarjo, Indonesia ([Sinta](#))

Totok Wahyu Abadi, Universitas Muhammadiyah Sidoarjo, Indonesia ([Scopus](#))

Complete list of editorial team ([link](#))

Complete list of indexing services for this journal ([link](#))

How to submit to this journal ([link](#))

Article information

Check this article update (crossmark)



Check this article impact (*)



Save this article to Mendeley



(*) Time for indexing process is various, depends on indexing database platform

Iraq's Counterterrorism Laws Under Scrutiny Unjustified Asset Freezes

Hukum Kontraterorisme Irak di Bawah Pengawasan Pembekuan Aset yang Tidak Dapat Dibenarkan

Samah Hadi Al-Rubaie, Samahhadi2019@gmail.com, (1)

Islamic University of Lebanon, Lebanon

⁽¹⁾ Corresponding author

Abstract

In response to the terrorist threat posed by ISIS, Iraq implemented legal frameworks aimed at disrupting terrorist financing, including the establishment of a committee to freeze terrorist assets as per international and national laws. This study assesses the effectiveness of these measures through qualitative analysis of legal documents and judicial reviews by the Federal Supreme Court, which found many asset freezes to be unjustified. The findings indicate a need for procedural refinement to ensure fair and effective enforcement, highlighting the challenges of balancing legal integrity with counterterrorism efforts in Iraq.

Highlights:

- **Effectiveness:** Examines the effectiveness of Iraq's asset freezing against terrorism, identifying practical issues.
- **Judicial Oversight:** Highlights the Federal Supreme Court's role in overturning unjustified asset freezes.
- **Legal Refinement:** Emphasizes the need to refine procedures to ensure fairness and compliance with international standards.

Keywords: Terrorism Financing, Legal Frameworks, Asset Freezing, Judicial Review, Counterterrorism

Published date: 2024-05-01 00:00:00

Introduction

Terrorism is one of the most serious crimes that have become lethal to society, and one of the most common crimes, and modern technical means have played an important role in spreading the culture of terrorism among young people and young children in particular, which requires the development of a wise criminal policy aimed at preventing the family first from drifting its children into the shafts of crime first, combating this crime and holding the perpetrators accountable second.

In the same context, and in an effort by the Iraqi legislator to fulfil its international obligations to combat terrorism contained in Security Council resolutions, and in response to the recommendations of the Financial Action Task Force (FATF), and to ensure the application of international standards and resolutions and in anticipation of sanctions that may be taken against countries that do not cooperate with the international community, as well as confronting terrorists and terrorist entities, the Iraqi legislator issued the Anti-Money Laundering and Combating the Financing of Terrorism Law No. 39 of 2015 and followed by Promulgation of the Terrorist Funds Freezing Regulations No. 5 of 2016, both of which have been supplemented by special provisions in the procedures for listing on terrorist lists of individuals and entities and in the freezing of funds and economic resources.[1]

A. A The Importance of Research

The importance of the research is determined by studying the legal structure in imposing it within the international and national framework represented by the work of the Committee for Freezing Terrorist Funds in Iraq, in terms of studying the criteria for inclusion in the unified, international and local lists based on tracking the financial assets of terrorist organizations or related to the so-called Islamic State to dry up the sources of terrorism and its sources of financing.

From this standpoint, this system has acquired great importance that requires study and research due to its incident, and its role in combating crime on the one hand, and its role in seizing funds intended for financing terrorism and then confiscating them, and as a result, considering them a tributary that supports the local budget and enhances public revenues, so that these funds benefit society after they were intended to destroy and terrorize society.

B. Research Objectives

The study aims to clarify the procedures stipulated in the Terrorist Funds Freezing Law No. (5) of 2016, especially as they are special procedures and are unusual in the penal laws known for their substantive and procedural branches, by granting them the authority to freeze funds and economic resources and list them on terrorist lists to an administrative body, the Committee for Freezing Terrorist Funds.

C. The Problem of Research:

The problem of our topic can be clarified: Has the Iraqi legislature been in accordance with the measures taken to freeze the funds and economic resources of terrorists in order to curb the fight against terrorism? Several sub-questions arise, including:

1. What are the criteria met by a person or entity in which the criminal risk is achieved?
2. What funds and economic resources can be frozen?

Method

We will take a mixed approach in this study, especially in the sections related to the legal texts related to the regime for freezing terrorist funds, as some legal rules were descriptive and some analytical.

We also followed the applied approach to present a set of applications for targeted financial sanctions at the level of the Committee for Freezing Funds in Iraq.

Results and Discussion

A. Research Structure

Considering that the subject of our research is one of the important topics in our time, the study has been divided into two sections:

1. The first topic: the legal description of the system of freezing terrorist funds No. (5) of 2016.
2. The second topic: the repercussions of the work of the Committee for Freezing Terrorist Funds No. (5) of 2016.

1. The First Topic

a. Legal Description of the " Terrorist Funds Freeze No. (5) of 2016 " Law

In compliance with United Nations resolutions on counter-terrorism and accession to the relevant international and regional conventions, the Anti-Money-Laundering and Combating the Financing of Terrorism Act No. 39 of 2015 was promulgated in Iraq, chapter VI of which is devoted to combating terrorism, drying up its sources and freezing its economic resources. [2]

This was followed by the promulgation [3] of the Terrorist Funds Freezing Regulation No. 5 of 2016, which included 27 articles [4].

All of the above will be addressed in the first section entitled: Legal Description of the Terrorist Funds Freezing System No. (5) of 2016 through two requirements:

The first requirement: the concept of the "Terrorist Funds Freezing Regime No. 5 of 2016".

The second requirement: the foundations of the work of the Committee "Freezing Terrorist Funds No. 5 of 2016".

b. Concept of the "Freezing of Terrorist Funds" Law No. (5) of 2016

The Iraqi legislature has not only criminalized the threat of terrorist organizations, but has also added a series of measures to complete all aspects of the criminal confrontation, including the freezing of funds, which are imposed by force of law on the basis of the decision to be included on the terrorist lists [5].

Although Regulation No. (5) of 2016 issued by the Council of Ministers, which was called the Terrorist Funds Freezing System, it is noticeable that this system did not define the freezing process, although in Article (1) thereof it defined some of the terms and phrases contained in the Law, and the opinion in this regard is that it did not mention the definition of freezing because the law on which the system is based, which is the Anti-Money Laundering and Combating the Financing of Terrorism Law No. (39.) of 2015 defined "freezing" with many terms in the law "as the prohibition of the transfer, transfer, disposal or movement of funds, equipment or other means when they are owned or controlled by designated persons or entities, based on a decision issued by a competent court, a competent administrative authority or a committee to freeze terrorist funds under the freezing mechanism based on actions taken by the United Nations Security Council or in accordance with its resolutions and for the duration of the resolution. "The Optional Protocol to the Convention on the Elimination [6].

It should be noted that the regime for freezing terrorist funds, although it does not define the freezing process for the reason we have mentioned, nevertheless restated in article 4 thereof and referred to what the freezing process covers, which is a formula close to that definition.

Accordingly, we can define the freezing of funds as one of the modern precautionary measures that target the funds or economic resources of individuals and entities accused of terrorism, suspects or associates with them by prohibiting their disposal, transfer, transfer or alteration of their image based on the decision of the competent authority.

The United Nations Convention against Transnational Organized Crime of 2000 defines freezing in article 2 (f) by saying that freezing or seizure means the temporary prohibition of the transfer, alteration, disposal, movement or temporary seizure or control of property on the basis of an order issued by a court or other competent authority. Such property must be subject to confiscation within the estimated value of the mixed proceeds, without prejudice to any powers relating to their freezing or seizure. [7]

Paragraph (l) of the 1988 Vienna Convention also stipulates that freezing or seizure shall mean the temporary prohibition of the temporary transfer, transfer, disposition, movement, seizure or seizure of funds on the basis of an order issued by a court or competent authority. Stopping the movement of funds and assets whose relationship with suspicious activities has been renewed, thereby preventing the transfer, concealment or disguise of such funds or assets, and the frozen assets remain the property of their owner under the management of the financial institution or the entity concerned and under the control of the management body responsible for combating such suspicious activities. [8]

Part of the criminal jurisprudence "the term freezing is strange to the criminal law, but it is close to the term seizure in the Code of Criminal Procedure, as the seizure achieves the meaning and purpose of freezing, it enables the authority of seizure or investigation to control the seized thing and prevent the offender from disposing of it, as the freezing of funds is achieved by preventing their disposal or preventing their management, as well as imposing custody and seizure, as well as freezing by seizing funds As for seizure, it is a procedure for seizing the thing and

keeping it at the disposal of the investigator in the interest of the investigation, and the interest of the investigation that justifies the seizure is proof, and the seizure may occur sometimes on the body of the crime, as in drug crimes, and sometimes on the things obtained from the crime, as in the crimes of money in general and the crime of money-laundering in particular, and at other times the seizure falls on the objects used in their commission, as in crimes of assault on persons.[9]

Moreover, freezing may mean protection, which is the seizure of funds, papers or documents, preventing a person, spouse and children from disposing of or managing such property, which is not a repayment of debts, but a temporary measure that protects the full rights of the parties, a limitation of ownership that deprives the owner of security for his debts and limits the right of creditors to perform it. [10]

And that the expression freezing may be alien to the concepts of criminal law because it was used in internal laws and regulations as a metaphor and influenced by the terminology used by international instruments. It is noticeable that these international conventions, whether conventions, memoranda or resolutions of the Security Council, have mostly associated the use of the term freezing with the term seizure and the same meaning and did not differentiate between the two terms, while you notice that the Law on Combating the Work of Money and the Financing of Terrorism has used the two terms and differentiated between them, as the term freezing was used in Prohibit all disposals of funds of persons and entities characterized by terrorism in accordance with the international lists prepared by the Security Council Sanctions Committee or the local lists prepared by the Committee for the Freezing of Terrorist Funds, and differentiates in its procedures from the concept and procedures of seizure of funds, which includes only the proceeds of the crime of making funds, the crime of financing terrorism or any property equivalent in value to the offender's other funds.

The legislator also copied the legal articles on seizure from the Code of Criminal Procedure and mentioned them in the body of the law, while noting that the procedures for freezing terrorist funds are completely different, as the freezing differs in terms of the authority to impose it, its procedures and its coverage of all terrorist funds, as well as the authority of the Committee to freeze the funds of the children and wife of the terrorist. Some Security Council resolutions recognize the non-observance of the criminal standards followed by the domestic laws of States on this subject, including resolution 1267 of 1999.

Having reaffirmed in the preamble to resolution 1735 of 2001 the procedures for freezing financial assets, travel bans and arms embargoes referred to in paragraph 1 below, as well as renewing the resolutions constituted by the established obligations on the freeze, which is preventive in nature and is not based on the criminal criteria provided for in national laws, and therefore the freezing obligation provided for in resolution 1267 (1999) should continue to be extended from time to time as decided by the Security Council, This has nothing to do with the final confiscation of frozen funds, nor with the criminal prosecution of any funds, and it was noted that measures to combat the financing of terrorism and the freezing of funds had moved in a stricter direction, leading to domestic legislation moving in the same direction.

Furthermore, resolution 1373 (2001) [11] emphasized criminal remedies with no clear characteristics of terrorists and the nature of a terrorist act, leaving the resolution on such issues to the scope of national legal systems, which could lead to confiscation if the necessary domestic legal grounds were in place.

However, the scope of the freeze must apply to all property owned or controlled by persons who have committed or attempted to commit terrorist acts; most existing laws only allow the freezing of property that is ultimately subject to confiscation, meaning in most countries both the instruments of committing the crime and the proceeds derived from it.

This corresponds to the seizure of funds procedure, and therefore authorities considering legislation must provide for a preventive freeze under resolution 1267 (1999) and for the possibility of confiscation under resolution 1373 (2001) if appropriate evidence can be secured or the freezing measure remains an indefinite preventive measure for frozen funds [12].

c. Pillars of the Work of the Committee for the Freezing of Terrorist Funds No. (5) of 2016

The mechanism for implementing targeted financial sanctions in Iraq is in line with the legislation on freezing financial assets represented in the Prevention of Money Laundering and Terrorist Financing Law No. 2015 (39) and the Terrorist Funds Freezing Law No. 2015, and they dealt with the formation of the Committee for Freezing Terrorist Funds, defining the tasks of this committee, the regulations adopted for it, and the criteria on which the Committee relies in applying targeted financial sanctions.

In this sense, the main purpose of the terrorist funds freezing regime is to impose a series of targeted financial sanctions on the funds and economic resources of terrorists included in the lists drawn up domestically or at the request of another State or subject to the decisions adopted by the United Nations Sanctions Committee on this issue.

In addition to "the relevant resolutions issued by the UN Security Council in this regard, and based on the text of Article (15) of the Anti-Money Laundering and Combating the Financing of Terrorism Law, which calls for the

formation of the Committee to Freeze Terrorist Funds, the Council of Ministers adopted its Resolution No. (271) of 2016 regarding the issuance of the Terrorist Funds Freezing Regulation No. (5) of 2016, which clarifies and regulates the mechanisms followed in the designation of persons and entities involved in the financing of terrorism.", and decides on the sanctions to be taken against those entities of seizure and confiscation of economic resources and freezing of funds.

On the basis of the Anti-Money Laundering and Combating the Financing of Terrorism Act and the Terrorist Funds Freezing Regime[13] [14], the Committee is composed of nine members representing the various ministries and bodies concerned, the [15] Chairman of the Committee is the Deputy Governor of the Central Bank, the Vice-Chairman is the Director General of the Office for Combating Money Laundering and the Financing of Terrorism, as well as a secretariat managed by an employee entitled Director of the It is directly linked to the General Secretariat of the Council of Ministers and operates under the supervision and guidance of the Chairman of the Committee [16].

With regard to the scope of the Committee's work, the Anti-Money-Laundering and Combating the Financing of Terrorism Act and the Terrorist Funds Freezing Regime are entrusted with circulating international lists, preparing and proposing lists of persons and entities involved or suspected of being involved in the financing of terrorist acts, as well as considering objections submitted in this regard. [17]

a) Preparation of Lists

The Committee's primary task is to prepare lists of persons and entities whose funds and economic resources are to be frozen, after which the publication [18] and circulation of these lists is required to all institutions and persons, whether private or public, as well as to inform the concerned parties whose assets, whether nationals or foreigners, residing in Iraq, are subject to these sanctions [19]. According to the relevant law and the freezing regime, these lists are found in four sources:

1. Lists published on the official website of the UN Sanctions Committee.
2. Lists prepared by the Committee with certain names who meet the criteria for freezing.
3. Lists of residents of Iraq whose funds have been frozen by the Committee through the Iraqi Ministry of Foreign Affairs, after verifying that the criteria for inclusion [20] are met.

b) Listing Criteria

Article X, paragraph (I), of the Regulations on the Freezing of Terrorist Funds stipulates specific criteria, the Committee examines the availability of persons and entities suspected of involvement in terrorist acts or their financing, so that they can be included in the freeze lists. [21]

1. Participate in planning, facilitating, preparing, or carrying out any act or activity for the benefit of, in cooperation with, in the name, on behalf of, or in support of one of the targeted parties, or any cell or group affiliated with it, or a dissident or branch thereof.
2. Participating in the financing of any act or activity for the benefit of, in conjunction with, under the name of, on behalf of, or in support of terrorist organizations or any cell or group affiliated with them or a splinter or branch thereof [22].
3. Supplying, selling, or transferring weapons or related materiel to, in conjunction with, under the name, on behalf of, or in support of terrorist organizations or to any cell or group affiliated with them or a dissident or branch thereof.
4. Recruiting for, in conjunction with, in the name, on behalf of, or in support of, or in support of, a terrorist organization, or any cell or group affiliated with it, or a splinter or branch thereof.
5. A legal person or entity owned or controlled, directly or indirectly, by any person or entity designated under the preceding four criteria or by any person acting on behalf of or under the direction of any such persons and entities [23].

c) Amendment or Reversal of the Freeze[24]

The Freezing Committee shall consider objections submitted by persons and entities regarding the freezing penalty imposed on them under the lists prepared by the Committee domestically based on Security Council Resolution 1373 of 2001 and other relevant resolutions, or international lists received by the Committee from other countries in order to include a person in the international list.

Thus, applications for objection to inclusion in the freezing lists by the relevant parties must be submitted directly to the Committee for consideration, and the Committee may maintain [25]or remove the name or amend the scope

of the freeze, if it finds that the frozen funds and economic resources are not covered by the provisions of this system.

[26] In this regard, the Committee works in coordination with the United Nations Sanctions Committee, whereby the Ombudsman considers objection requests submitted by any person whose name has been included in the lists issued by the United Nations Sanctions Committee for the purpose of removing his name from the freeze lists. [27] Furthermore, the system requires the Committee to review its domestic freeze list at least every six months to ascertain whether there are still grounds for listing [28].

2. The Second Topic

a. Implications of the Work of the Committee for Freezing Terrorist Funds No. (5) of 2016

In accordance with the provisions of the Iraqi legislator on targeted financial penalties, the supervisory bodies represented by the Ministry of Commerce and Industry, the Central Bank of Iraq, the Securities Commission, the Insurance Bureau and other prescribed bodies are transferred to regulatory bodies. A body in the Council of Ministers [29] which is responsible for supervising financial institutions and non-financial professionals if they engage in transactions contrary to the Terrorist Financing Act; It stipulates that the regulatory authorities specified under the Law on the Prevention of Money Laundering and Terrorist Financing, which violate the regime for freezing terrorist funds (Article 20, second paragraph), will be responsible for verifying the compliance of financial institutions, professions and non-private actors. Financial business is subject to the standard provisions specified in this system.

With reference to Article (26) of the relevant law, we find that the duties of the regulatory authorities are limited to developing audit procedures and all kinds of tools and standards in order to monitor the compliance of financial institutions and non-financial professionals with legislation. The obligations arising from this law are also entitled to audit the practices of branches of financial institutions and subsidiaries outside Iraq, and meet all the conditions specified by the law and the instructions issued pursuant thereto.

What is the solution when "financial institutions" violate the obligations contained in law and order?

"The Terrorist Funds Freezing Regulation No. 5 of 2016 imposes an obligation on financial entities and non-financial professions to refer to international and local lists when entering into any relationship with a person to ensure that his name is not included in these lists. [30]

With reference to article 22 of the Terrorist Funds Freezing Regulations, which refers to the application of the sanction's measures provided for in article 45 of the Anti-Money Laundering and Combating the Financing of Terrorism Act in the event that non-financial institutions or professionals fail to comply with the provisions of this Law. [31]

All of the above will be addressed in the second section entitled: Implications of the work of the Committee "Freezing Terrorist Funds No. (5) of 2016" through two demands:

The first requirement: the implications of the inclusion in the freezer lists.

The second requirement: the repercussions in terms of issuing some decisions issued against individuals and groups.

b. Implications for Inclusion in the Freezer Lists

The Terrorist Funds Freezing Regime affirms that "the scope of the freeze shall extend to the seizure and freezing of funds and economic resources and the prohibition of their transfer, transfer or disposal in such a way as to a change in their size, quantity, location, ownership, nature, destination or use for any purpose whatsoever". [32]

It should be noted that the freezing regime deals with economic resources of all kinds and forms, summarizing their seriousness in terms of the possibility that they will be used to obtain funds, goods or services used to support and finance terrorist operations, whether tangible or intangible, movable or immovable, actual or potential, to include equipment, equipment, means of transport, natural resources and all associated industries and raw materials, weapons and all that is involved in their industries and their trade. And until the benefit is complete.

Advantages of sanctions: The application of financial sanctions targeting the funds and economic resources of terrorists, including freezing and prohibiting their disposal, is characterized by a set of principles to be followed for the purpose of achieving the purpose of these sanctions in the field of suppressing and combating terrorism in the best and most effective way, perhaps the most prominent of which are the following features:

1. Freeze decisions must be implemented immediately without delay or the need for prior warning.
2. Freezing lists must be published in the Official Gazette and on the website of the Office for Combating Money

Laundering and the Financing of Terrorism [33].

3. Freezing decisions must be applied without the need for a criminal investigation, trial or judicial decision, as these penalties are considered an exception to the punishment system adopted by the judiciary, by giving the administrative decisions issued by the freezing committee the ruling of the judicial decision.

4. The penalty for freezing funds and prohibiting the disposal of economic resources shall be associated with listing in the list, as these penalties shall remain in force throughout the period of validity of the listing, unless the penalty for inclusion in such lists is amended or reversed in accordance with the provisions of this system.

5. Send the names listed to other States so that they can take the necessary action on the funds and economic resources on their territories belonging to persons and entities suspected of involvement in terrorist acts, at the request of any interested party.

Entities addressed by freezing decisions and the obligations entrusted to them: After circulating the lists of funds freezing to the concerned authorities in this regard, for the purpose of contributing to the application of the stipulated penalties, the Law imposes several obligations on these bodies.

1. Entities Addressed by Freezing Decisions

The "Terrorist Funds Freezing Regime defines the entities addressed by the freezing lists as two bodies, namely financial institutions and non-financial professionals specified thereunder, and other bodies concerned with this system that can be added by a decision of the Council of Ministers. [34] As for Designated Non-Financial Businesses and Professions, the Act defines them by stating that "Designated Non-Financial Businesses and Professions include real estate brokers, goldsmiths, dealers in precious metals or stones, lawyers or accountants, whether freelance or associates or employees of specialized companies and providers of services to companies, trust funds and other companies [35].

2. The Obligations Incumbent Upon these Entities under the Provisions of the Regime for Freezing Terrorist Funds

With reference to the provisions of the regime on the freezing of terrorist funds, the most prominent of these obligations can be summarized as follows:

a. Exercise due diligence when entering into any relationship or dealings with a person or entity to verify the validity of the information provided by him about his identity and the nature of his activity, and not to engage him in suspicious acts.

b. Freeze funds and economic resources owned by any person or entity dealing with them, if they are provento be included in the freezer lists, and the obligation to inform the freezing committee immediately after taking such measures against the person or entity involved in terrorist acts, and not to allow the disposal of any funds or economic resources directly or indirectly to any person or entity included in the freezer lists or for the benefit of any of them or for its account.

c. Inform the Terrorist Funds Freezing Committee as soon as it becomes aware or suspects that a current or former client or any person with whom it deals or has previously dealt is a person on the unified freeze lists, locally, or internationally, or is suspected of involvement in terrorist acts.

d. Cooperating with the Committee for the Freezing of Terrorist Funds by providing it with accurate information on the status of funds and economic resources and any related action, nature and quantity, which would facilitate the enforcement of the provisions of law and order and all instructions issued in this regard.

e. Financial institutions and designated non-financial professionals and businesses are subject to the supervision of designated bodies operating under law and order [36], which verifies the compliance of such institutions and professions with the provisions of the law and order and the instructions issued in this regard.

3. Implications in Terms of Issuing Some Decisions Issued Against Individuals and Groups

The Financial Assets Freezing Committee has issued several decisions on targeted financial sanctions with the aim of freezing the organization's vast funds that it collects from various sources, starting with institutions supporting terrorism, then the sale of oil on the black market, the imposition of taxes on trucks, business owners and employees, and organized crime operations[37], and these decisions came in accordance with the approach of the United Nations Security Council and in implementation of the provisions of the Anti-Money Laundering and Combating the Financing of Terrorism Law No. (39) of 2015 and the Financial Assets Freezing Regime No. (5) For the year 2016 The Committee has referred in its decisions to the provisions contained in the law and order.

We will outline some of these resolutions as follows:

a. Examples of the Decisions of the Special Committee on Individuals

The Iraqi arena has witnessed many practical applications of the Committee for the Freezing of Terrorist Funds, including Resolution No. (28) of 2020, which stated based on what was presented by the Supreme Judicial Council / Presidency of the Nineveh Federal Court of Appeal, and based on the provisions of the Anti-Money Laundering and Terrorist Financing Law (39 of 2015), and the Terrorist Funds Freezing System No. (5 of 2016), and in accordance with In accordance with the powers vested in the Committee, the Committee decided to freeze terrorist funds at its third regular session held on 8/ 7/2020 The following: First: Freezing of movable and immovable funds and economic resources belonging to the persons whose names are listed in the list[38].

From this decision, it is clear that the Committee referred to the freezing of all movable and immovable funds belonging to terrorists and the preparation of the local list in this regard, and the work of the Committee is not limited to this point, but it has the authority to issue decisions within the unified lists, and this can be clarified from Resolution No. (5) of (2017), which stated "Based on the provisions of Articles (15) and (16)(i) of the Anti-Money Laundering and Combating the Financing of Terrorism Law No. 39 of 2015 and the provisions of Article 9/I of the Terrorist Funds Freezing Law No. 5 of 2016, and in accordance with the powers vested in the Committee, it is decided as follows:

1. Freezing of movable and immovable assets and economic resources belonging to the published names of Iraqi persons included in the consolidated list issued by the United Nations Security Council sanctions committee.
2. The decision shall be implemented immediately starting from the date of its issuance on 7/3/2017 and shall be circulated to ministries and entities not related to the ministry, provincial and governorate councils, financial and non-financial institutions, departments and all relevant authorities.

The Committee is not limited to freezing only, as it has the authority to amend the freezing decision when it proves the correction of the behavior of the person concerned, as stated in its resolution No. (36) of 2020 based on what was approved by the Security Council Sanctions Committee formed under resolutions numbered (1297 of 1999, 1989 of 2011, and 2253 of 2015) imposed on Daesh, the terrorist organization Al-Qaeda and individuals, groups, institutions and entities associated with them, and the provisions of the Anti-Money Laundering and Terrorism Financing Law (39 of 2015), and the Freezing Terrorist Funds (No. 5 of 2016), The Committee for the Freezing of Terrorist Funds decided to circulate amendments to the consolidated list that came from the Security Council Sanctions Committee established pursuant to resolution 2368 (2017), as follows: First: Amendments to each of the following: 1, (...) Tunisian nationality whose movable and immovable assets have already been frozen.....".[39]

b. Examples of the Decisions of the Special Committee on Entities and Groups

Many decisions have been issued concerning entities and institutions, including the following [40]:

1. Resolution No. (1) of (2017): In reference to the provisions of Articles (15) and (16/Second) of the Anti-Money Laundering and Combating the Financing of Terrorism Law No. (39) of 2015, the Committee decided the following: First: Freezing movable and immovable funds and economic resources belonging to (...) financial transfer company located in Karbala province / ... neighborhood / Dar (.....). Second: Freezing movable and immovable funds and economic resources owned by the chairman, members of the board of directors and the authorized director of a company..... For money transfer.

2. The Committee also indicated in its resolution No. (15) of 2017, based on the aforementioned law and system, to freeze movable and immovable funds and economic resources belonging to a banking office and to circulate this decision to all institutions for implementation.

3. Resolution No. (11) of 2020 Based on the approval of the Sanctions Committee established pursuant to Security Council resolutions numbered (1267, 1989, 2253 and 2368) for the years (1999, 2011, 2015 and 2017) regarding Daesh, Al-Qaida, individuals, groups, undertakings and entities associated with them, the provisions of the Anti-Money Laundering and Combating the Financing of Terrorism Law No. 39 of 2015, and the Terrorist Funds Freezing Regime No. 5 of 2016, and in accordance with the powers vested in the Committee. The Committee for the Freezing of Terrorist Funds decided to add a number of entry (entity) (2) To the consolidated list from the Security Council sanctions committee, as follows: Addition of the entity registration of the Islamic Province of West Africa and the Islamic State in the Greater Sahara.

In addition, it has recently issued resolutions, including "Resolution No. (3) in 2021 Based on the sanctions committee established under Security Council resolutions (751/1844) for the years (1992 and 2008), the provisions of the Anti-Money Laundering and Terrorism Financing Law No. 39 of 2015 and the terrorist funds freezing regime No. 5 of 2016, the committee decided to add (3) terrorists to the consolidated list that came from the International Sanctions Committee on Somalia, the deputy leader of Al-Shabaab, a Somali national, as well as the addition of Al-Shabaab's own name has been registered, and this decision has been circulated to all ministries, non-ministry entities and all financial institutions to implement this decision and take the necessary action on the names and entities contained therein." [41]

It is worth noting that a set of measures have been taken to freeze the financial assets of the organization by the Central Bank and in coordination with the Office of Foreign Assets Control of the US Department of the Treasury, the so-called Emir of the Ministry of Finance of the terrorist organization Daesh in Mosul has been listed on the deprivation lists of the Office of Foreign Assets Control (OFAC) and the necessary measures have been taken to prevent it from entering the Iraqi financial system and freeze its movable and other funds. The Central Bank also stressed the need for financial institutions, banks and concerned authorities not to deal with the invitee with regard to financial assets.

From the foregoing, it is clear that the Committee for the Freezing of Terrorist Funds has issued many resolutions based on Security Council resolutions, whether those resolutions relate to individuals included in the sanctions list or they relate to companies or terrorist groups in order to freeze all financial assets and economic resources. Months to ensure that the reasonable reasons for listing on the sanctions list remain or not, and sometimes issues its decision to amend the delisting of names when it ascertains that the reasons are not available in accordance with item (fourth) of Article (13) of the Terrorist Funds Freeze Law No. (5) of 2016.

Conclusion

In this study, we dealt with the role of the terrorist funds freeze system No. 5 of 2016 in combating the crime of terrorism, and we have reached many results and recommendations that can be summarized as follows:

The freezing of terrorist funds and economic resources is one of the most important tools for combating the financing of terrorism. This issue has been included in the relevant international resolutions and conventions issued within the framework of the United Nations aimed at eliminating the sources of terrorism, and in addition to the procedures for freezing funds at the internal level, which contribute significantly and effectively to combating the financing of terrorism and drying up its sources, the freezing of measures taken within the framework of the International Financial Action Committee and the suppression and combating of terrorism.

Iraq was one of the first countries to legislate the freeze as a means of combating the financing of terrorism, and in 2016 it issued Regulation No. 5 of the Terrorist Funds Freeze System, and funds were created to impose financial sanctions on terrorists listed on local, joint or international freeze lists.

The freezing of financial assets of individuals and organizations shall generally be included in the unified, international or domestic sanctions lists after meeting the conditions established by the Security Council and related to terrorist acts or the financing or arming that constitute a threat to international peace and security.

The application of freezing sanctions to individuals and organizations varies greatly from country to country because application against individuals requires accurate information in terms of the name, resources, and financial assets of the targeted person, so as not to violate human rights standards.

References

1. A. S. D. Al-Gheriri and M. A. H. Al-Bayati, "Procedures for Freezing the Funds of Terrorists and Terrorist Entities in the Iraqi Anti-Money Laundering and Terrorist Financing Law No. (39) of 2015," *Tikrit University Journal of Law*, vol. 7, no. 2, pp. 31, 2022.
2. A. Abubakar, *Anti-Money Laundering and Counter-Terrorism Financing: Law and Practice in Nigeria*. African Books Collective, 2015.
3. "Regulation No. 5 of 2016," published in *Iraqi Gazette*, no. 4419, Oct. 10, 2016.
4. S. A. H. R. Ramadan, "International Terrorism: Its Causes and Ways to Combat It in International Law and Islamic Jurisprudence," *Journal of the Faculty of Sharia and Law in Tanta*, no. 31, pp. 1161, 2016.
5. G. M. Ghannam, "Listing Entities on the Terrorism List and the Requirements of a Fair Claim," *International Journal of Law*, no. 1, College of Law, Qatar University, pp. 120, 2019.
6. I. D. Norman, F. N. Binka, and B. M. Awiah, "Mapping the Laws on Anti-Money Laundering and Combating Financing Terrorism to Determine Appraisal Skills of Accountable Institutions for the Twin Challenges," *Issues in Business Management and Economics*, vol. 3, pp. 87-99, 2015.
7. W. H. Al-Din Al-Ahmad, "International Conventions to Combat Transnational Crimes," Dar Ghaida for Publishing and Distribution, Amman, pp. 19, 2019.
8. W. Hossam El-Din, "Combating Transnational Organized Crime," *Library of Law and Economics*, Saudi Arabia, pp. 38, 2016.
9. B. M. K. A. Latif and M. M. Rashid, "Criminal Policy in the Field of Freezing the Funds of Terrorism Suspects and Its Role in Addressing Crime," *Journal of Legal Sciences*, College of Law, University of Baghdad, Special Issue of the Criminal Law Branch Conference, pp. 14, Nov. 22-23, 2017.
10. R. M. A. B. M. Siddiq, "Conditions for Accepting the Urgent Lawsuit," *Menoufia University Journal*, vol. 56, no. 1, pp. 404, 2022.
11. A. K. Wahish, "The International Framework for Targeted Financial Sanctions and Their Applications in Iraq," *Journal of Law for Legal Studies and Research*, vol. 16, no. 26, pp. 170, 2023.

Indonesian Journal of Law and Economics Review

Vol 19 No 2 (2024): May

DOI: <https://doi.org/10.21070/ijler.v19i2.1050>

Article type: (Intellectual Property Right)

12. N. Mugarura, "Anti-Money Laundering Law and Policy as a Double Edged Sword," *Journal of Money Laundering Control*, vol. 23, no. 4, pp. 899-912, 2020.
13. Y. Danziger, "Changes in Methods of Freezing Funds of Terrorist Organisations Since 9/11: A Comparative Analysis," *Journal of Money Laundering Control*, vol. 15, no. 2, pp. 210-236, 2012.
14. "Decision No. 28 of 2020 of the Committee for the Freezing of Terrorist Funds."
15. "Decision of the Committee for the Freezing of Terrorist Funds No. (36) of 2020"
16. "Decisions of the Committee Anti-Money Laundering and Terrorism Financing Office published on the website on Nov. 7, 2021," available at: https://aml.iq/?page_id=2162
17. "Decision of the Committee for the Freezing of Terrorist Funds No. (3) in 2021," available at: <https://aml.iq/wp-content/uploads/2021/04>