



# NEWSLETTER

A Nation Without Corruption, A Society With Integrity

Volume 45 (January-April 2022). KDN Permit No: 11959/03/2019 (025399)

## PRESIDENT'S MESSAGE

The year 2022 started well with the gradual easing of restrictions caused by the Covid-19 pandemic. In March this year we were able to organize our first face to face event in Penang on "Post Section 17A and the Challenges Implementing Adequate Procedures in Commercial Organizations". We will be organizing similar program in other states this year. This programme is funded by the Centre for International Private Enterprise.



MACC as an enforcement agency entrusted in the fight against corruption was in the spotlight again. Issues related to MACC officers getting involved in a robbery case, replacing US Dollar notes under MACC's custody with fake notes by its officers and the controversy involving the Chief Commissioner on share trading activities, has not made it easy for MACC to regain its image since the Teoh Beng Hock's case several years ago. Reforming the MACC has become more urgent than ever to ensure the institution is truly independent without the interference of the executive but with direct parliamentary oversight. TI-Malaysia led a delegation with other CSOs to present a proposal to GIACC (Governance Integrity and Anti-Corruption Commission). We will be engaging with other stakeholders including the law division in the Prime Minister's office. This initiative is expected to face many challenges but we must pursue this until MACC is a truly independent anti-corruption agency.

I am pleased to report in the last quarter our society organized an online forum on "Women Against Corruption" with eminent women speakers including a representative from the United Nations for Women group. In the last quarter we also launched the "Guidance on Good Practice and Checklist for Adequate Procedures" and the "Employers' e-book on Section 17A-Corporate Liability" targeting the SMEs. It is believed these two releases from TI-Malaysia will help companies in the private sector and SMEs to prepare with adequate procedures as a defense against corporate liability. The e-book was published in four languages (English, Malay, Mandarin and Tamil). The executive committee would like to record their sincere thanks to the secretariat and the team for putting in many hours to develop the checklist and the e-book.

Among the upcoming events lined up is a training programme for young journalists on investigative journalism as investigative journalism in Malaysia it is still at an infant stage. Other activities lined up is to hold a forum on the flow of dirty money to create awareness on AMLA (Anti-Money Laundering Act) and on Beneficial Ownership.

**Dr Muhammad Mohan**

**President**

**Transparency International-Malaysia**

## EDITORIAL

Early this year, Lalitha Kunaratnam, an anti-graft activist became an overnight sensation through her articles based on investigative journalism conducted on her own accord. While, we await the confirmation of “veracity” of these reports from the relevant Malaysian Authorities, we Malaysians need to appreciate and value the role, relevance and importance of investigative journalism in our society.

Investigative journalism provides truth about people from government and other entities such as corporations who attempt to keep their often illegal activities secret. Its purpose is to expose such actions so that those involved can be held accountable.

A prime example of this is the 1972 Watergate scandal, investigated by two journalists named Bob Woodward and Carl Bernstein. They became suspicious of the connection between a break-in at a hotel called the Watergate Hotel and then-President Richard Nixon’s re-election campaign. The pair uncovered a series of political crimes and “dirty tricks” that connected the burglary to the White House. Their reporting led to indictments of 40 officials in the Nixon Administration and eventually, Nixon’s resignation.

In 2016, the Panama Papers were released by the International Consortium of Investigative Journalists (ICIJ). The papers exposed the complex methods certain companies and individuals used to conceal beneficial ownership of companies. It exposed how politicians, their families and associates used offshore tax havens to avoid paying taxes and conceal their wealth via secretive offshore companies. Malaysians were also among the list.

In Malaysia, we had in the 80s an Award-winning investigative journalist R. Nadeswaran, best known by his popular column name Citizen Nades, in Malaysia’s highest circulating English-language newspaper The Sun. The most prominent expose was the Port Klang Free Zone (PKFZ)’s RM 2 billion t scandal. He did this work together with his long-time partner Terrence Fernandez. He also released an explosive book titled - "Curi-curi Malaysia: Stories Behind The Stories".

Another person is Clare Rewcastle Brown who was born in Sarawak. She exposed the 1MDB scandal – one of the biggest-ever corruption scandal in the world involving a head of state.

The importance and relevance of investigative journalism in Malaysia can’t be ignored given the fact that Malaysia has consistently ranked low in the Corruption Perception Index measured by Transparency International. Corruption is one of the most serious problems faced by the people of Malaysia. We need to expose more wrong doings, and one of the effective instruments to enable this is through investigative journalism. We need more of it, but the question is how. Developing the investigative journalism practice is a good place to start.

Like any other practice, there are challenges militating against the practice of investigative journalism. Such impediments include poor remuneration, bad working conditions, harassment, threats, corruption within the media, and the relationship between publishers and politicians. In Malaysia, it is further compounded by the fact that our journalism education isn’t preparing the journalist in the practice of investigative journalism. Therefore, TI (M) would be looking at addressing this gap in journalism.

**Dorai Balasundarum Sinnadurai**



# WOMEN AGAINST CORRUPTION: COMING TOGETHER AS MALAYSIANS ENCOURAGE WOMEN TO REPORT WRONGDOING

On 19 February 2022, TI-Malaysia organised a forum where a panel of professionals shared their personal experience about addressing the issue of corruption in the country. The forum was launched by Dr Muhammad Mohan, TI-M President and moderated by our member Ms Geetha. The forum started with a presentation titled “The Gendered Impacts of Corruption, are Women Less Corrupted Than Men?” by Ms. Alexandra Hakansson Schmidt, Program Analyst-Governance, Peace & Security of UN Women. She elaborated that corruption affects women disproportionately than men in the aspects where women are more likely to pay bribes for health services meanwhile women with higher levels of education are more vulnerable to paying bribes to public schools. Although there is no conclusive direct relationship between eradicating corruption and better representation of women, however, increasing the number of women in politics contributes to building accountability and governance systems that are transparent and responsive to the needs of women and men.

Cynthia Gabriel from C4 Center pointed out that insufficient protection for whistleblowers is impacting women negatively as in addition to not having proper protection from the law, women are also prone to harassment and bullying that are gender centred. This was reiterated by Dato Sutinah, Ex-Deputy Commissioner, MACC.

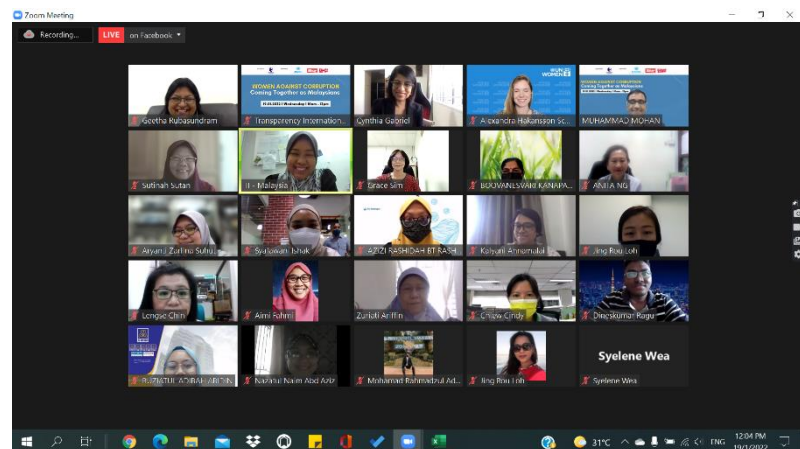
The forum continued with the presentation from YB Dato Seri Azalina Othman Said - Member of Parliament, Pengerang where she touched on gender mainstreaming from the political perspective. She called for having laws enacted to have more women participation in higher managerial positions and take on political roles.



Presentation by Ms Alexandra, Program Analyst of UN Women



Moderator Geetha Rubasundram & YB Dato Seri Azalina Othman Said



Group photo of the participants

# GUIDANCE ON GOOD PRACTICE AND CHECKLIST FOR ADEQUATE PROCURES

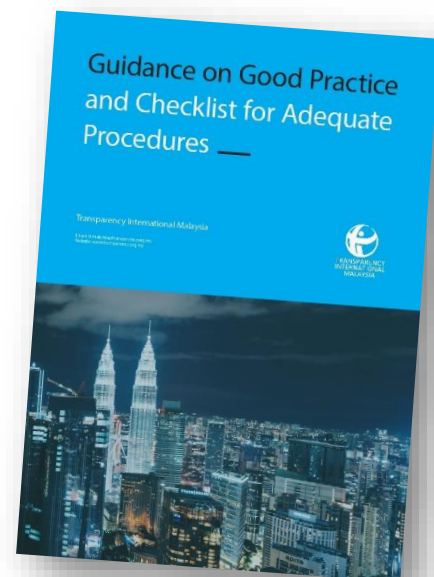
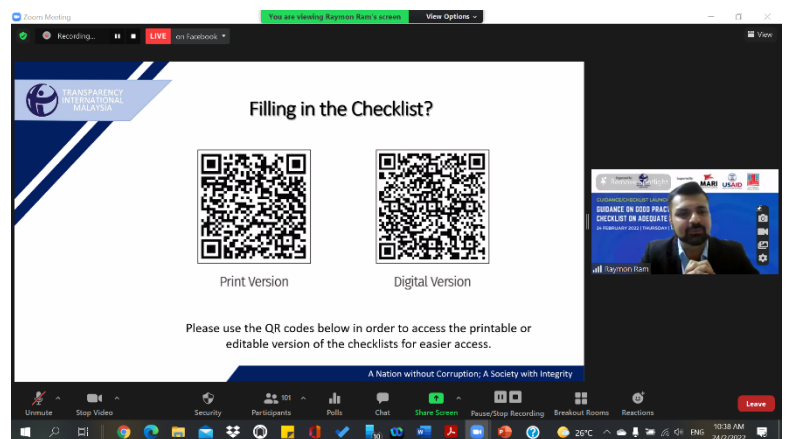
## IMPLEMENTATION OF A HOLISTIC ANTI-CORRUPTION PROGRAM

TI-M has taken the initiative to spearhead the development of a reference for good practice and a checklist for implementation of the T.R.U.S.T. principles as per the Ministerial Guidelines on Adequate Procedures, pursuant to Subsection 5, Section 17A, MACC Act 2009. This guidance/checklist is intended as a guide for Malaysian commercial organisations to comply with the anticipated act, in particular with the amendment in Section 17A which came into force on 1 June 2020. The amendment requires organisations to put in place adequate procedures to prevent employees and agents from committing bribery to further the organisations' interests. TI-M would like to express our sincere gratitude to the following stakeholders for their inputs and insights in establishing a comprehensive checklist:

1. Boustead Holdings Berhad
2. Cyberview Sdn Bhd
3. Duopharma Biotech Berhad
4. Institut Integriti Malaysia
5. Maxis
6. MIDF Berhad
7. Sime Darby Berhad
8. SME Corp. Malaysia
9. Suruhanjaya Syarikat Malaysia
10. The Institute of Internal Auditors Malaysia
11. Top Glove Corporation Berhad
12. VERITAS Design Group

The full version of the checklist is available here:

<http://transparency.org.my/pages/news-and-events/publications/guidance-on-good-practice-and-checklist-for-adequate-procedures>



## SECTION 17A EMPLOYER' HANDBOOK EMPOWER SMEs IN UPHOLDING BUSINESS ETHICS

Small and medium enterprises (SMEs) have played an important role in fostering growth, employment and income, and have been integral to Malaysia's economic transformation process. In 2020, SMEs contribution was 38.2%, to the country's gross domestic product (GDP). Around 1,151,339 businesses within Malaysia are identified as SMEs as reported by the Department of Statistics Malaysia. This further demonstrates the level of competition among the SME industry and it breeds the right conditions for unethical business practices.

This e-book therefore is aimed to serve as a valuable guide in promoting proper business ethics at the workplace as it provides an extensive information on bribery and corruption offences, gratification, facilitation payment, conflict of interest, kickbacks, Section 17A and also the TRUST principles. The e-book was published in four languages of English, Malay, Tamil and Mandarin.

The e-books are accessible here:

<http://transparency.org.my/pages/news-and-events/publications/section-17a-employers-handbook-for-small-and-medium-enterprises-smes>



# POST SECTION 17A AND THE CHALLENGES IN ESTABLISHING ADEQUATE PROCEDURES WORKSHOP

## ENHANCING DEFENCE MECHANISM OF PRIVATE SECTOR AND SMEs

After two years of being unable to conduct events face to face, Transparency International Malaysia (TI-M) was finally able to host our first physical workshop this year in the beautiful island of Penang.

The workshop titled Post Section 17A and the Challenges in Establishing Adequate Procedures for Corporate and SMEs was held at the Royale Chulan Hotel Penang on the 28th of March 2022.

The focus of the workshop was specifically on corruption present within corporations and SMEs, and the unique challenges and the effective solutions for companies in implementing Adequate Procedures in their businesses.

We were honoured to have the Director of MACC Penang, KPKPj Puan Lim Bee Kean join us to deliver the keynote address to kick off the workshop after the welcoming remarks by TI-M's President, Dr Muhammad Mohan. MACC Penang also sent a representative to speak on corruption in the corporate sector. Tuan Jayaraj Goval of MACC Penang delivered an immersive and detailed segment on the types of corruption practices as well as guideline which can be used to prevent corruption in the corporate sector.

Our second speaker was Puan Nurirdzuana Ismail, the Head of Integrity and Governance of Maxis Berhad, who spoke on The Implementation of Adequate Procedures and its Challenges for Maxis Berhad. She took the participants through the difficulties and process of implementing Adequate Procedures in a large corporation like Maxis Berhad.

Our third and final speaker was Miss Lim Hang Thing, the Chief Operating Officer, Trili Maju Sdn Bhd from Penang. Her segment titled The Implementation of Adequate Procedures and Its Challenges for Trili Maju Sdn Bhd, covering similar aspects of the difficulties and process of implementing Adequate Procedures as the speaker before her but from the perspective of an SME.

After all the three speakers had concluded their segments, the moderator, Mr Raymon Ram, Secretary General of TI-M, opened the floor for questions from the participants which led to a lively and interactive question and answer session. The event concluded with the closing remarks from all three speakers.

We would like to thank our speakers for sharing their valuable insights and input with the participants and all parties that helped make this event a success.



Group photo: President with the Director of MACC Penang, speakers and moderator



The engagement between speaker and participants during the forum

## MALAYSIAN ANTI CORRUPTION COMMISSION REFORMS TO ADDRESS AND DEAL WITH THE SCOURGE OF CORRUPTION

Recent events involving MACC, the anti-corruption enforcement agency has once again raised concern on MACC's independence and reputation. In 2015 TI-Malaysia together with other CSOs proposed to the Barisan Nasional government to reform MACC to be accountable to parliament and the appointment of the Chief Commissioner by the YDP Agong is from the recommendation of parliament instead of the Prime Minister. However, this initiative did not attract the government's interest then. In February TI-Malaysia led by our President Dr Muhammad Mohan together with advocacy groups, IDEAS, C4, Bar Council and Rasuah Busters engaged with GIACC's (Governance Integrity & Anti-Corruption Commission) policy team led by Datuk Seri Mohd Salehhuddin. We proposed the reform structure and the proposed amendments to the MACC Act and constitutional amendments needed (See Figure 1). Although this initiative can be a long and arduous challenge for CSOs, but our society will continue to pursue this reform as it is not only part of our strategic plan but it is also an initiative in the NACP.



### MACC: MAKING IT TRULY INDEPENDENT

Sinar Harian organised a forum called KOMPASS: Making MACC an Independent Institution held at the Krangkraf studio in Shah Alam. The speakers were YB Ganabatirao (Adun, Kota Kemuning), Cynthia Gabriel (Executive Director, C4) and Dr Muhammad Mohan (President, TI-Malaysia). The discussion focussed on why the MACC as an enforcement agency should be made truly independent and free from any political interference. This reform will not only allow MACC to investigate anyone but at the secure a fixed tenure in office for the Chief Commissioner. At the moment the candidate for the post is decided by the executive. This will ensure the Chief Commissioner cannot be removed by any incoming Prime Minister or new government unless by a special tribunal. This will however require legislative changes.



V.Ganabatirao, Cynthia Gabriel and Dr Mohan as the speakers for the forum

# Proposed Structure of the Independent Anti Corruption Commission (IACC)

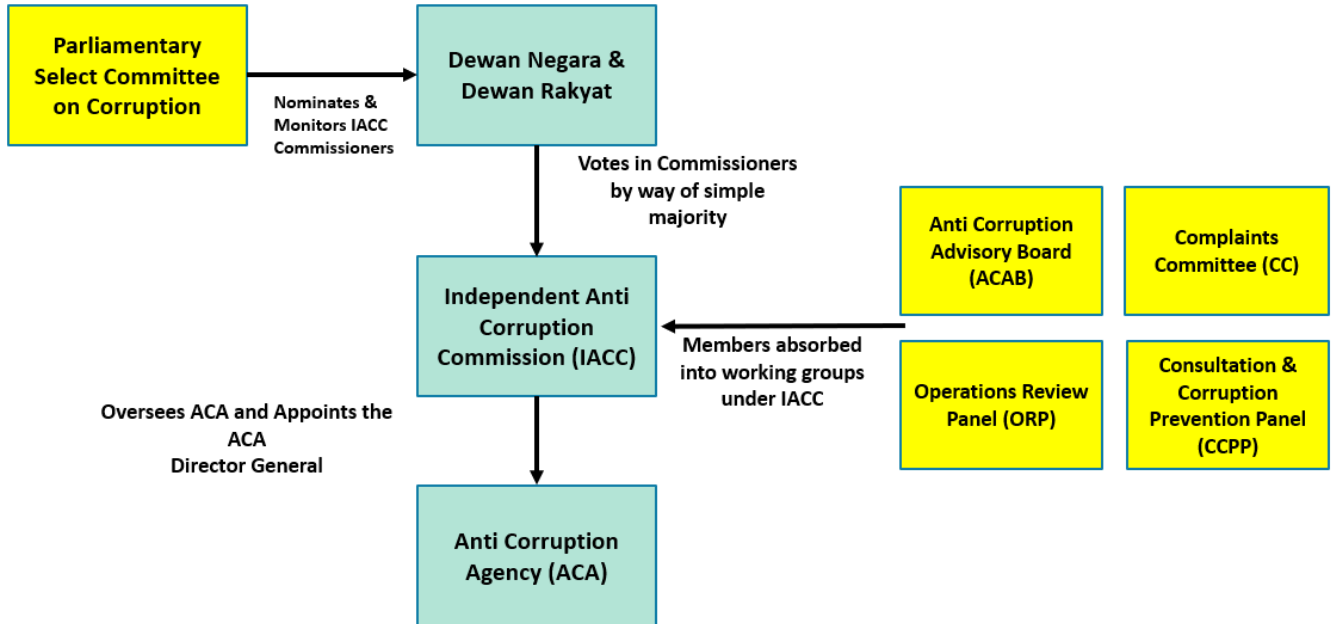


Figure 1





Desakan reformasikan struktur SPRM



Reformasi SPRM diarahkan kepada penambahbaikan struktur SPRM dan meningkatkan integriti.

Bagi pablikan integriti, capai standard etika tinggi

KEWATIAHAN MEDIA BERSAMA

BHARUAS, 12 JANUARI 2022. KUALA LUMPUR - Deklarasi terhadap Kema Persekitaran Suruhanjaya Pencegahan Rasuah Malaysia (SPRM), Tan Sri Azam Baki telah memunculkan gelombang kritikan dan tekanan yang tinggi sebagai sebahagian daripada usaha untuk memajukan integriti dan capai standard etika tinggi.

Sebuah sidang media di hadapan media dan wartawan...



Tan Sri Azam Baki, Ketua Pegawai Eksekutif SPRM.

Sebagai ketua SPRM, beliau telah berhadapan dengan pelbagai tekanan dan kritikan. Beliau menegaskan bahawa SPRM akan terus berdedikasi untuk meningkatkan integriti dan capai standard etika tinggi.

REAKSI



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Penarik rug... serangan ikan sangkar



Reformasi SPRM diarahkan kepada penambahbaikan struktur SPRM dan meningkatkan integriti.



Lebuhraya tertinggi di Malaysia dibuka



Reformasi SPRM diarahkan kepada penambahbaikan struktur SPRM dan meningkatkan integriti.



Bangka biaya... pentarik Port Dickson



Reformasi SPRM diarahkan kepada penambahbaikan struktur SPRM dan meningkatkan integriti.

SOLUSI TRANSFORMASI SPRM

SBPR perkasaka SPRM

Pembaharuan Suruhanjaya Bebas Pencegahan Rasuah tingkat kecekapan SPRM

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SOLUSI TRANSFORMASI SPRM

Segerakan reformasi SPRM

Rasuah Busters menuntut perubahan lebih besar ke atas institusi pencegahan rasuah



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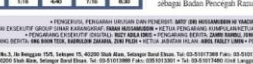
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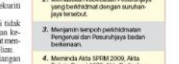
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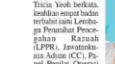
Orang awam anggotai 4 badan kawal SPRM

Ikut langkah Korea Selatan, Indonesia pastikan SPRM bebas pengaruh politik



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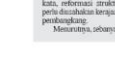
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Kes pemilihan saham Azam Baki

# Siasatan beri ruang bersihkan nama

### TI-M dapat proses turut peritahjaya agensi bela diri

Oleh Tiah Hafiz Aziz  
lahfazah.abdiaziz@ph.com.my

**Kuala Lumpur:** Siasatan oleh badan bebas yang dibentuk kerajaan akan memberi peluang kepada Ketua Pengerusi Suruhanjaya Penerimaan Rasuah Malaysia (SPRM), Tan Sri Azam Baki untuk memulakan diri termasuk dalam siasatan yang dijalankan.

Presiden Transparency International Malaysia (TI-M), Dr Muhammad Mohan, berkata proses itu juga akan membolehkan nama baik agensi penguatkuasaan rasuah negara.

"Suruhanjaya Sekuriti (SC) pula kemudiannya menjangkitkan kesihatan bersejarah yang menandakan mereka akan mengeset perkara ini jika terlahap sebarang kemungkinan kepada Jawatankuasa Khas Parlimen Mengenal Rasuah untuk tindakan selanjutnya."

"TI-M mengadapi peson sa- panya siasatan bebas penuh keti- dian dimana segera berlagu dan- dia ini kerana ia membolehkan integriti dan reputasi SPRM serta Lembaga Penerimaan Rasuah Malaysia (LPRM).

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perkaru itu sudah dibekalkan kepada umum, rakyat berhak tahu perkara sebarang dan pihak-pihak percaya hingga tindakan efektif segera dan ketahanan daripada ke- rusan akan memulakan tindakan di- lingkari dan reputasi SPRM dan lain-lain tidak memengaruhi rasuah dan siasatan rasuah di negara ini.

Berita berkata, TI-M amat minat siasat dengan SPRM atas per- tanyaan yang menyimpulkan agensi penguatkuasaan itu dan pegawai bertanggungjawab sebagai. Merujuk kenyataan akhbar di- bukukan kepada media pada 3 dan 8 Januari lalu oleh pegar- ai dan ahli LPRM, Tan Sri Abu Zahar Usang mengemukakan ke- bingungannya mengenai perlagu- an dengan Tan Sri Azam Baki dan memulakan siasatan kepada beliau sebagai pihak-pihak berkepentingan dalam kes pemilihan saham.

"Suruhanjaya Sekuriti (SC) pula kemudiannya menjangkitkan kesihatan bersejarah yang menandakan mereka akan mengeset perkara ini jika terlahap sebarang kemungkinan kepada Jawatankuasa Khas Parlimen Mengenal Rasuah untuk tindakan selanjutnya."

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## SEGERA JADIKAN SPRM INSTITUTE BEBAS

Dapat jalankan siasatan tanpa campur tangan pihak luar

Observasi: ZULKIFLI dan NORHIZIA SHAFI HANIN



Dr. Jais, Khalid Adam, V. Ganesan, Cynthia Goh dan Dr. Muhammad Mohan pada program Rasuah Bebas. SPRM adalah institusi yang paling banyak ditanya oleh masyarakat mengenai siasatan rasuah.

**Kepercayaan penjawat awam lemah dari segi ketekunan, keberantingannya**



Dr. Muhammad Mohan, Presiden Transparency International Malaysia (TI-M).

Suruhanjaya Penerimaan Rasuah (SPRM) perlu diubah dan dipisahkan dari agensi- agensi lain yang mempunyai mandat untuk menjalankan siasatan rasuah. SPRM adalah institusi yang paling banyak ditanya oleh masyarakat mengenai siasatan rasuah.

**Wujudkan agensi bebas pantau perilaku, aktiviti pihak berkuasa**



Khalid Adam, Ketua Pengerusi Suruhanjaya Penerimaan Rasuah (SPRM).

SPRM adalah institusi yang paling banyak ditanya oleh masyarakat mengenai siasatan rasuah. SPRM adalah institusi yang paling banyak ditanya oleh masyarakat mengenai siasatan rasuah.

# in the court of public opinion

## MACC must work harder to preserve integrity, say groups

By ASHLEY TANG  
newsdesk@thestar.com.my

**PETALING JAYA:** The Malaysian Anti-Corruption Commission (MACC) has to do more to quell doubts about its integrity, say civil society groups.

Transparency International president Muhammad Mohan said that when MACC chief commissioner Tan Sri Azam Baki explained that his brother used his trading account to acquire shares in 2015, an investigation should have been conducted to find out if he had violated any laws.

He said the public and civil society looked to the MACC as the guardian and final defence against corruption.

As such, corruption allegations would create a 'trust deficit'.

Muhammad added that it would also be good if the MACC or the Anti-Corruption Advisory Board spoke to Prof Dr Edmund Terence Gomez, who resigned from the MACC Consultation and Corruption Prevention Panel in protest over the panel's inaction with regard to allegations against Azam.

"The public will ask how you formed an opinion based on one side of the story. But I think we also have to be fair to Tan Sri Abu Zahar (using the chairman of the advisory board, as he said Gomez could still provide him with the evidence and that he would not compromise on integrity or wrongdoing).

"So, I think the door is still open for Gomez since he claims that he has the evidence," he added.

Alternatively, Muhammad said, if Gomez does not trust the advisory board anymore, he could lodge a police report on the matter by providing all the evidence.

"This is up to Gomez to take it further from here," he said.

Human Rights Commissioner of Malaysia (Sabah) commissioner Jerald Joseph said it was incumbent upon any organisation and commissioner to give more information so that there were no lingering doubts in anyone's minds.

He said the explanation given made for a 'good start but it was still very little'.



Jerald: 'The more questions you answer, the more your credibility will grow.'



Jais: 'Personal attacks and accusations are part and parcel of being the MACC chief.'



Muhammad: 'The public and civil society look to the MACC as the final defence against corruption.'

better if it is so that these allegations can be stopped or corrected if it is wrong or proven by either party.

"There is nothing wrong with answering the public, NGO or anyone's queries out there. The more you answer, the more your credibility will grow," he said.

Jerald noted that accountability was the cornerstone of why the MACC existed.

"It is to make the country more accountable, so I think the leaders will need to answer any allegations against them."

"It is tough because the chief commissioner may feel that it is not fair to him, but the only way to counter whatever information that is thrown against him is with more information and answers," he said.

Jerald said public servants had clear protocols for asset declaration and positions held in private companies, among others, adding that due process for this must be followed.

Malaysia Corruption Watch president Jais Abdul Karim applauded Azam for giving his explanation

and said he had carried out his responsibility well.

"We believe there are some parties out to get him. They are even prepared to stab him in the back. This is part and parcel of being the MACC chief."

"We hope the MACC is prepared for bigger 'attacks' as it is going against those who are corrupt," said Jais.

Berlin president Thomas Fann said it was of public interest that the integrity of the MACC chief be above reproach and any suspicious wealth fully investigated, and raised by concerned citizens such as Gomez.

"The MACC advisory board is clear Azam based on his own explanation, without thorough independent investigation or any evidence."

"The integrity of the MACC, and still in doubt. When it comes to corruption, no effort should be spared to gain public confidence in the national anti-corruption body," he said.

Police want 785 boats to aid flood response

KUALA LUMPUR: Police request 785 boats in order to district police headquarters in wide for flood response.

Federal Internal Security Public Order Department of Comm Datuk Hazani Ghazali they would suggest to the gment that five boats be acqui each of the 157 district police quarters nationwide.

"These boats will act as a response measure should flood occur within their jurisdiction told reporters yesterday.

Comm Hazani added that had claimed 54 victims and while two others were still in Selangor recorded 25 de- loded by 21 deaths in Kelantan (four), Sabah (the Negri Sembilan) (one).

"The two missing victims reported in Pahang," he said.

On the current flood in Comm Hazani said 3,989 involving 13,322 people affected in seven states.

"As at noon on Wedne evacuation centres are these seven states," he said.

"A total of 6,042 police have been deployed for 4 tions, including Interna and Public Order Depart- ments such as the Air 3 General Operations Force Police and Federal Reser- v." On the situation in Comm Hazani said four's been completely cut off waters there.

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# Corruption Through Rose Tinted Glasses

**By: Geetha Rubasundram**

*Consultant & Trainer for*

*Forensic Accounting, Governance & Anti -Corruption, Corporate Reporting*

*Member of Transparency International Malaysia*

***“At which point of our lives do we loose the ability to only see black or white and rationalize that grey is the way to go?”***

I asked this crucial question in many of the sessions I had participated in when advocating good governance. It is deep, self-reflecting question that I do not expect answers to. Instead, it helps place the session into right perspective to remove-judgment and instead provokes the mind-set to want to understand that we as humans can be corrupt depending on our circumstances. We are quick to point fingers at corrupt politicians but we too may want to reach for our wallets to settle a petty offence if we think we can get away with it. In terms of materiality, one could justify that we are not comparing apples to apples – but doesn't it provide a similar thought and decision-making process. How would you justify this to a child? Imagine a child who is being taught about moral values, ethics, integrity and everything good and then comes out to a parent that beats a traffic light or tries to sweet talk a traffic enforcement officer? Isn't that hypocrisy equal to teaching the child that what is being taught is not something we should apply in real life?

Unfortunately, in life, this is a true fact of life. We are taught to be selfish and to think of ourselves first. How many would stand up for what is right in a proper and legal manner? How many would actually tell their children or loved ones “do not be a busy body. It will affect your future”. We teach about ethics and governance in universities and within our professional line of work, but many of us can also share the conditional ethics and professionalism we have encountered amongst our work environment and colleagues.

The level of corruption in Malaysia seems to be even more embedded as the years go by. Apart from the results from the annual Transparency International Corruption Perception Index reflecting the drop in our ranks and scores, it is also apparent in our headlines, the legal cases and literally in our daily life. Increasing number of reports in terms of bloated budgets and spending, low quality products and services, money-laundering trails, missing persons, victimized whistle-blowers as well as wildlife and environmental abuse seem to be a daily recurrence. The recent floods in Malaysia also raised questions on our disaster and crisis management officials, the budgets allocated for it as well as the reasons behind the floods.

However, Malaysia is not the only country with a dismal report. It is rather depressing to read the overall drop in some countries for the Corruption Perception Index score and rankings. Apparently, the pandemic has brought about a sense of desperation whereby corruption has managed to rear its ugly head higher than before. This does not count the other types of possible mismanagement or corrupt practices that has not considered legally corrupt. The recent cases of political lobbying gone wrong as well as the ability to still hide illegally obtained funds in offshore havens in the “good governed” countries reflect the biased perception of corruption. The increasing focus on sustainability financing to push forward the sustainability agenda is also smeared with issues of “green-washing”. The hope of technology removing or minimizing secretive transactions has been over shadowed by advanced technologies in allowing secretive transactions and fraud to occur.

Perhaps, it is time we head back to the drawing board and reflect on the simple way of life. But, perhaps, that is wishful thinking and a rather naïve perspective of life which would not fit into the corporate world? Maybe, just maybe, we should consider that prior to the 1996 advocacy of anti-corruption and good governance initiatives,

bribery related expenses were tax deductible and everything was just so simple? Bribery related expenses were tax deductible because the bribery wasn't discovered.

Or was it? Today, each of us has a choice. We can choose to hide our heads in the ground sand and watch as the gap between the rich and poor increases, reducing the rule of law to ashes and destroying the environment. Or, we can hold true to the right values, and to proudly teach the future generation true values we can hold on too. I for one would hold on to the second option and will continue to advocate for a just world and hoping for more to join the bandwagon.

At the same time, this is a shout-out to all advocates that have made a difference in anti-corruption initiatives – keep the spirit going and let's make the world a better place. Recently, when I landed in KLIA, the screens were playing anti-corruption shots focusing on the reactions of mothers that had discovered that their children had received illegally obtained funds. It sent across a strong message. The family institution plays a significant role in combatting this, bringing this back to one of my initial questions – what are you teaching your children?

***Disclaimer:***

*The views, information and opinions expressed in this article are the author's own and do not represent Transparency International Malaysia. TI-M is not responsible for any inaccuracy or error.*

# Whistle Blowing and the law in Malaysia

*By: Balbeer S Jessy*

*Member of Transparency International Malaysia*

The importance of effective whistle-blower in combating corruption cannot be under-estimated. Corruption is an endemic that occurs in almost every nation and segment of society worldwide. What differs from one another is only the degree of its occurrence. Hence, it is important that whistleblowers come forward to report corruption and be protected, not only in their place of employment, but for their own personal and family safety.

The Organisation for Economic Co-operation and Development (OECD) describes whistleblower protection as the ultimate line of defence for safeguarding the public interest. Protecting whistleblowers promotes a culture of accountability and integrity in both public and private institutions, and encourages the reporting of misconduct, fraud and corruption. But whistleblowers often become targets or victims, facing harassment and all sorts of reprisals for their good deeds in reporting improper misconduct. They are often seen as a threat to the corrupt and those who commit misdeeds against society through their lack of transparency, governance and accountability.

Internationally, the Watergate Scandal (1972), Enron (2002) and Worldcom (2002) financial scandals were all exposed by whistleblowers. In China, Dr Li Wenliang was the first person who warned the world about the COVID-19 on 30th December, 2019. However, on 3rd January 2020, Wuhan police summoned and admonished him for "making false comments on the Internet. He died from COVID-19 in February 7, 2020 while treating patients in Wuhan.

In Malaysia, the Whistleblower Protection Act 2010 (WPA 2010) (Act 711) is the governing Act for whistleblower protection in Malaysia, together with the Witness Protection Act 2009 (Act 696) and the Malaysian Anti-Corruption Commission (MACC Act) 2009. These define the laws on whistleblowing and corruption in Malaysia. However, since enforcement of the WPA in 2010, there has not been an encouraging response from the public, especially the civil service to come forward and report corruption. The fear of being a victim is a repulsive factor. Several recent Malaysian cases show why the Act is seen as unfavourable to whistleblowers, who have a very 'small window' to report corruption and improper conduct in the public, private and corporate sectors.

One of the reasons the WPA 2010 has not received good response is because of a trust deficit among the public and potential whistleblowers. The main factors for this are mistrust against custodians in charge providing protection, fear among whistleblowers for their own personal and family safety, job risks and the strict requirements for seeking protection under the WPA 2010. This is accentuated by the fact that certain limitations imposed on whom they can report an improper misconduct, the looming possibility being denied protection if procedures are not followed and the stigma associated in being identified as a whistleblower, especially among workplace colleagues.

Case laws have also shown that whistle blowers sometimes end up punished as "victims" instead of the perpetrators of improper conduct and corruption. This is despite Section 10(3)(b) of the Act allowing for action against employers who victimize whistle blowers. This could be the reason why only 0.01 percent of the 1.6 million

civil servants reported corrupt practices in their respective departments and agencies, despite various incentives provided for them.

Figures made public also show that only 343 civil servants came forward to provide information on corrupt practices between 2012-2019 despite Government guidelines for recognition to civil servants who report bribery, mainly due to the above reasons. There could also have been cases of whistleblowers who accepted actions against them for reporting improper conduct without reporting to the relevant authorities, as there is no public disclosure on this.

Recently however, action has been taken against an employer who victimized his staff for reporting corruption. In September 2020, the Malaysian Anti-Corruption Commission (MACC) charged a company deputy director, the first person since 2010, under Section 10(3)(b) of the Whistleblower Protection Act 2010, which carries a fine of not more than RM100,000 or a jail term of up to 15 years or both if found guilty.

Another problem with the WPA 2010 is that a disclosure by a whistleblower is prohibited by certain written laws (Section 6 of the WPA). This requires a disclosure can only be made to an enforcement agency (Section 2 and 8 of the WPA) and that certain whistleblowers are not protected under the Act (Section 11 of the WPA). The enforcement agencies for reporting before a whistle blower can be entitled to protection, currently are:

1. Malaysian Anti-Corruption Commission (MACC)
2. Immigration Department
3. Royal Malaysian Customs Department
4. Royal Malaysian Police
5. Road Transport Department
6. Securities Commission
- 7 Companies Commission of Malaysia

In the case of *Khairul Azwan v Rafizi Ramli*, the judge best summed up the problem on whistleblowing protection by stating that, “The existing Whistleblowers Protection Act 2010 is inadequate to encourage whistle blowers to come forward. It is in fact more detrimental to whistleblowers as there are restrictions on the kind of information whistleblowers are allowed to disclose and to whom they can disclose. The outcry against the Act signifies the public perception that the Act is put in place to intimidate whistleblowers and was enacted hastily.” In short, there has been concern expressed by the courts on restrictions faced by whistle blowers.

### **Corruption – An Insidious Plague**

In defining corruption, former United Nations Secretary General Kofi A. Annan, at the 2004 adoption of the UN Convention Against Corruption (UNCAC) in New York, remarked that corruption is “an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.” Malaysia is a signatory and ratified the UNCAC on 24th September 2008.

The Malaysian Anti -Corruption Commission defines corruption as the act of giving or receiving of any gratification or reward in the form of cash or in-kind of high value for performing a task in relation to his/her job description. His Royal Highness Raja Azlan Shah best described this by saying “corrupt means doing an act knowing that the

act done is wrong, doing so with evil intention... purposely doing an act which the law forbids. Corruption is a question of intention. If the circumstances show that what a person has done or has omitted to do was moved by an evil intention or a guilty mind, then he is liable.” The economic losses from corruption are enormous. Transparency International estimates losses of USD 2.6 trillion (RM10 trillion) worldwide annually due to corruption. Malaysia too has seen its own share of corruption scandals. Among them are the BMF corruption scandal of the 80s, the Port Klang Free Trade Zone scandal, Sabah Water Department, National Feedlot Corporation (NFC), 1MDB and SRC International cases, among others. The majority of these involved taxpayers’ money and is committed not only in the public sector, but by politicians and top-level management working together with private individuals locally and overseas.

So is it surprising that Malaysia dropped five spots to 62 in the global rankings of Transparency International Malaysia's (TI-M) Corruption Perceptions Index (CPI) 2021, marking the second consecutive year that the country has seen a decline in the rankings? Malaysia's score fell below the 50-point mark to 48 for 2021, from 51 and 53 in 2020 and 2019 respectively. The fact that Malaysia has fallen a further 5 spots is a matter of concern on the problem of corruption in the nation.

### **The Malaysian Whistleblowing Framework and its Limitations**

Who then exactly is a whistleblower? The MACC defines a whistleblower as a person who provides information disclosing an act of improper conduct, to the relevant enforcement agency (i.e. MACC), that may enable the enforcement agency to initiate an investigation. The Commission encourages whistleblowers to come forward and assist eradicating corruption. In this respect, the WPA 2010 and Witness Protection Act 2009 are meant to protect a whistleblower who reports a corrupt practice. The Act provides that the whistleblower’s identity shall not be disclosed and protection will be provided under the Whistleblower Protection Act 2010.

Furthermore, Section VI (Protection of Witnesses/Informers) under the MACC Act, provides protection for informers and their identities. It adds that the whistle blower’s legislation and witness protection legislation is to enhance the protection given to informants in relation to corruption or bribery offences.

Under Section 2 of the WPA 2010, the power lies in enforcement agencies to carry out investigations of improper conduct and detrimental action against the complainant and authorizes the court to make orders for remedy. This means an individual is limited to lodging a complaint on improper conduct to one of the seven enforcement agencies.

One of the main limitations of the Act has been the narrow scope of interpreting “enforcement agency.” It is clearly stated under Section 2 of the WPA that complaints can only be made to an enforcement agency which has investigation and enforcement powers. This is certainly against the spirit of encouraging the public to come forward and report cases of corruption or misdeeds. Anyone who does not report any improper conduct to one of these agencies, but instead goes to reveal the information to other sources such as the media, journalist, elected assemblyman or Member of Parliament will not be entitled to protection under the Act.

Even an employee who reports an improper conduct to his superior instead of an enforcement agency can be denied protection if he goes to them later. Larmer (1992) opines this may cause conflicts between a company and its employees because “employees possess prima facie duties of loyalty to their employers”. It is a well known

fact that many organisations have internal complaint management systems for improper conduct. In an effort to safeguard the organisation's good name, an employee who is a whistleblower may report improper conduct to the management instead of the enforcement agency. Ab Ghani (2013) says most employees tend to blow the whistle externally when they find that the internal audiences are of complicity with the wrongdoings; so they look for external audiences who are able to intercede. However, under the WPA, such cases will not be entitled to whistleblower protection if it is sought later. So despite the good intentions, a whistleblower will be denied protection by this narrow limitation.

In the case of *Khairul Azwan Harun v Mohd Rafizi Ramli* (2016) , the Court ruled that the defendant had not complied with Section 2 of the WPA and hence could not be granted protection under Section 7 of the same Act, as he had disclosed the information through the media and not the proper channel under the Act. Nevertheless, the High Court Judge in his judgement noted that the defendant does not believe that the WPA 2010 is an effective piece of legislation to encourage whistleblowing. "In fact, he maintains that the Act is detrimental to whistleblowers as there are (according to him) restrictions on the kind of information whistleblowers are allowed to disclose and to whom they can disclose." The Judge said there was an outcry against the Act and that this signifies the public perception that it is put in place to intimidate whistleblowers.

Returning to the issue at hand, at the material time of the Press Release, the defendant was the executive director of an organisation known as National Oversight and Whistleblowers ("NOW"). As the name suggests and as duly explained by the defendant during the trial, the *raison d'etre* of NOW is to, raise public awareness of, inter alia, national scandals."

The Judge further remarked, "Even in a truly functioning democracy with credible institutions, whistleblowers provide key breakthroughs that can safeguard public interest especially from within corporate walls to avoid corporate scandals that normally would have escaped public attention, if not highlighted by whistleblowers to safeguard public interest. There have been various documented cases from around the world as proofs of the positive role played by whistleblowers to safeguard public interest. The existing Whistleblower Protection Act is inadequate to encourage whistleblowers to come forward. It is in fact more detrimental to whistleblowers as there are restrictions on the kind of information whistleblowers are allowed to disclose and to whom they can disclose. The outcry against the Act signifies the public perception that the Act is put in place to intimidate whistleblowers and was enacted hastily".

Similarly in *Rokiah Mhd Noor v Menteri Perdagangan Dalam Negeri Koperasi & Kepenggunaan Malaysia & Ors* , the Court of Appeal held the whistleblower who exposed the misconduct was not protected under the WPA 2010 because she had not made the disclosure to any enforcement agency, in breach of Section 2 of the WPA, leaving them unable to seek protection under Section 7 of the WPA. The decision of the Court of Appeal was upheld by the Federal Court in 2018. The appellant was not a whistleblower within the meaning of the WPA. It is submitted this case shows the weakness of the WPA 2010 as Section 2 limits the exposure of misconduct by any whistleblower to only the seven enforcement agencies mentioned above. This limitation is not only too narrow, but also prevents others from coming forward to report improper conduct in their organisations. It also may deter them as they feel insecure and fearful to come forward if there is no protection offered.



Section 2 of the WPA was cited again when whistleblower protection was denied in *Yushri Zainudin v Silterra Malaysia Sdn Bhd* (2019) . The parties were asked to address the Court on whether the disclosure by the Claimant attracted protection under the WPA 2010. It was submitted on behalf of the Respondent that the Claimant did not enjoy such protection under Section 6 of the WPA 2010, as he did not make such disclosure to an 'enforcement agency' defined under the Act. The Respondent further cited the cases of *Rokiah binti Mhd Noor* where the Federal Court had ruled that the appellants were not entitled to protection as they did not qualify as whistleblowers within the meaning of the WPA.

In *Dr Milton Lum Siew Wah v Majlis Perubatan Malaysia* (2020) 1 CLJ 270 , the High Court held that in cases of disclosure of improper conduct under the WPA 2010, it is vital that the complaint is communicated to an 'enforcement agency' within the meaning of S. 2 of the Act. A regulatory body like the Malaysian Medical Council, while having disciplinary jurisdiction over its members, does not have any investigation and enforcement functions or powers and is thus not an enforcement agency. It followed that an application for certiorari and mandamus to declare the Council an enforcement agency and compel it to act as such under the Act is untenable and failed. The applicant had sought remedies from the court for detrimental action in reprisal for the disclosure of improper conduct, pursuant to S 15(1) of the WPA. Since the applicant was not a whistleblower under the WPA and the respondent was not an enforcement agency under S. 2 of the WPA, the provision of S. 15(1) was inapplicable.

The above cases clearly reveal that due to the limited scope available to report improper conduct, complaints must only be lodged to an enforcement agency specified in the Act. The enforcement agency shall then recommend action to the relevant 'disciplinary authority'.

### **Section 6 WPA – Disclosure of improper conduct and Whistleblowing**

Another area of concern is Section 6(1) of the WPA. This section was used to deny whistle blower protection in the case of *Rafizi Ramli v Public Prosecutor* [2014] 3 MLJ 114. The Plaintiff was not given protection under the WPA because the information exposed by him was against the law (the now-repealed Banking and Financial Institutions Act (BAFIA), which replaced with the Financial Services Act. Under Section 6 of the WPA, it is submitted that 'any written law' would also cover the Official Secrets Act (OSA) or any matter that is classified by the government as such. Thus, any disclosure of improper conduct under Section 6 of the WPA would deny a person protection. This is a setback for those intending to come forward to report improper conduct and corruption as the Minister can classify any information under the OSA to deprive public exposure.

However, in the case of *Syed Omar Syed Agil v Institut Profesional Baitulmal Sdn Bhd* (2017) , the issue of protection under Section 2, 7(1), 10(1), (3) and (7) was raised. The Plaintiff, in his capacity as Chief Executive Officer of Institute Profesional Baitulmal Sdn Bhd ('IPB') had reported to the MACC and Polis Diraja Malaysia (PDRM) in regard to certain improper conduct of the employees at IPB. The employer took various disciplinary measures detrimental to and against him.

The plaintiff was suspended and subjected to disciplinary action under S.2 of the WPA, which was prohibited under S.10(1), (3) and (7) of the Act. After considering the surrounding and supporting facts and circumstances, the Court held the plaintiff qualified as a whistleblower under the Act. The plaintiff had proven his case on a balance of probabilities and granted the relief that he claimed. It is submitted that in the above case, the Plaintiff

had correctly followed procedures of the WPA and disclosed information to two of the enforcement agencies listed in Section 2, i.e. MACC and PDRM. He was thus entitled to protection under Section 7 of the Act.

The strict interpretation of the WPA can further be seen in the case of Anbuselvan Sinnasamy v Indah Water Konsortium Sdn Bhd . In this wrongful dismissal case under the Industrial Relations Act, the company claimed that the identity of an alleged IWK contractor was not disclosed during the Domestic Inquiry because he was a 'whistleblower' as defined under Section 2 of the WPA, in that he is a person who makes a disclosure of improper conduct. The Court however did not agree to this explanation given by the Company. Section 2 of the WPA 2010 defines whistleblower as 'any person who makes a disclosure of improper conduct to the enforcement agency under Section 6.

Based on the above, it is obvious there is a very narrow window of opportunity for whistleblowing protection in Malaysia. The WPA 2010 Act must go through a complete review, something which has been promised by the government in the next sitting of Parliament in March this year. The lacuna in the law is a cause for concern and not attractive to encourage whistleblowers to come forward and report corruption.

Minister in the Prime Minister's Department Datuk Seri Dr Wan Junaidi Tuanku Jaafar has said that the proposed amendments to the WPA 2010 would include enhanced protection to complainants in curbing abuse of power.

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## Tentang Rasuah

**Oleh: Sahul Hamid bin Mohamed Maidin**

*Pensyarah di Universiti Perguruan Sultan Idris (UPSI)*

*Ahli Transparency International Malaysia*

Ini adalah rencana pertama saya yang ditulis untuk disiarkan dalam makalah terbitan Transparency International-Malaysia. Sebagai permulaan dan pengenalan, perkara pertama yang perlu ditelusuri adalah berkaitan istilah korupsi itu sendiri yang sering dilunakkan dan dihilangkan makna sebenar kejiikannya. Korupsi itu apa? Adakah sama ia dengan rasuah? Adakah 'korupsi' sudah diterima sebagai korpus bahasa dalam bahasa Melayu, iaitu bahasa kebangsaan negara ini? Dan jika sudah diterima, istilah apa yang lebih sesuai digunakan untuk menggambarkan kerosakan dan kebejatan masyarakat, rasuah atau korupsi? Demikianlah beberapa persoalan yang perlu diulas dan dikupas bagi kita memahami mekanik korupsi –*the mechanic of corruption*- dalam laras bahasa yang difahami oleh masyarakat setempat.

Istilah korupsi sudah diterima masuk ke dalam korpus bahasa Melayu, dengan maksud seperti berikut, “amalan atau perbuatan yang salah atau tidak amanah (spt pecah amanah, menerima rasuah dll). Manakala istilah rasuah pula bermaksud, “pemberian untuk menumbuk rusuk (menyogok, menyuap); tumbuk rusuk (sogok, suap). Demikianlah yang tertera dalam portal Pusat Rujukan Persuratan Melayu. Ternyata bahawa kedua-dua istilah tersebut berbeza. Korupsi lebih luas ertinya daripada rasuah. Sedang rasuah hanya meliputi kesalahan pemberian dan penerimaan wang misalnya, korupsi merangkumi kesemua kesalahan yang berhubung dengan hubungan antara manusia. Rasuah adalah subset daripada korupsi.

Korupsi secara ringkasnya adalah kerosakan. Korupsi berasal daripada perkataan Inggeris, 'corruption'. Corruption, menurut kamus bahasa Inggeris Cambridge, bermaksud “perbuatan salah, jahat dan tidak jujur, terutamanya oleh orang yang memegang kuasa.” Portal Transparency International pula mendefinisikan korupsi sebagai “salahguna kuasa yang diamanahkan demi memenuhi kehendak peribadi.” Rasuah adalah satu komponen dalam korupsi. Rasuah adalah bahagian kecil daripada korupsi. Erti 'kerosakan' yang dibawa oleh istilah korupsi ini juga sebenarnya bertepatan dengan perihal yang disebut dalam al-Quran tentang perbuatan salah dan jahat yang membawa kepada kemusnahan manusia dan alam. Itulah 'fasad'. Fasad juga membawa maksud ringkas, kerosakan.

Surah al-Baqarah, ayat 30 menjelaskan detik terawal kebimbangan mengenai fasad ini, iaitu ketika manusia diciptakan buat kali pertama. “Dan (ingatlah) ketika Tuhanmu berfirman kepada para malaikat, “Aku hendak

menjadikan khalifah di bumi.” Mereka berkata, “Apakah Engkau hendak menjadikan orang yang berbuat kerosakan dan menumpahkan darah di sana, sedangkan kami bertasbih memuji-Mu dan menyucikan nama-Mu?” Dia berfirman, “Sungguh, Aku mengetahui apa yang tidak kamu ketahui.” Istilah dasar yang digunakan di ayat ini berasal daripada fasad, iaitu kerosakan – korupsi. Satu lagi ayat Quran yang mengukuhkan hal ini adalah dalam surah ar-Ruum ayat 41 yang bermaksud, “Telah timbul pelbagai kerosakan dan bencana di muka bumi kerana tangan manusia; kerana Allah hendak merasakan kepada mereka sebahagian daripada balasan perbuatan buruk yang mereka lakukan, supaya mereka kembali insaf.” Jelas, kerosakan, kemusnahan dan kejahatan yang berlaku di dunia adalah kerana tangan manusia. Dan Tuhan menurunkan balasan kerananya, setimpal terhadap kejahatan yang dilakukan tersebut.

Demikianlah korupsi merosakkan ekosistem alam dan manusia. Kerana perbuatan buruk dan jahat manusia, berlakunya kerosakan. Dan ekoran kerosakan itu, kita ditimpa pelbagai musibah dan bala bencana. Banjir, tanah runtuh, gempa bumi, letusan gunung berapi dan ribut misalnya semuanya berpunca daripada kerosakan yang dimulakan oleh tangan manusia pada satu tempoh tertentu yang akhirnya mendatangkan kemusnahan kepada seluruh manusia. Dan elemen terbesar daripada korupsi ini sudah tentulah rasuah. Perbuatan memberikan suapan kepada seseorang bagi mendapatkan sesuatu atau untuk mengelakkan sesuatu secara tidak sah, melangkaui kebenaran undang-undang atau etika masyarakat.

Sebagai rumusannya, istilah korupsi adalah lebih meluas dan *impactful* berbanding istilah rasuah itu sendiri. Suruhanjaya Pencegahan Rasuah Malaysia misalnya lebih molek jika ditukar kepada Suruhanjaya Pencegahan Korupsi Malaysia. Demikian juga dipraktikkan di banyak agensi luar negara seperti di Indonesia (Komisi Pemberantasan Korupsi); di Hong Kong (Independent Commission Against Corruption); dan di Singapura (Corrupt Practices Investigation Bureau). Rata-ratanya merepresentasikan istilah korupsi bagi menggambarkan keadaan penyelewengan dan kerosakan. Rasuah hanya menjadi satu elemen yang disiasat di dalamnya. Penggunaan istilah yang lebih jitu dapat membantu untuk meluaskan kefahaman masyarakat terhadap kejiikan penyelewengan, pecah amanah, rasuah dan penipuan. Istilah ‘rasuah’ bukanlah salah, tetapi ia tidak menyeluruh bagi menggambarkan kerosakan, keburukan dan kemusnahan.

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## MEET OUR TEAM

Introducing the backbone of TI-Malaysia:

### Senior Executive – Nurizzati Mohamad Nor

We are pleased to announce the promotion of Pn Nurizzati from Project Executive to Senior Executive. She joined TI-M three years ago and has progressed very well and has played a key role in planning and executing advocacy projects as well as providing executive support for the society. She has a background in International Relations and has a strong will and goal to combat corruption in our society and determined to build a nation with integrity.



### Project Officer - Justin Bryann Jarret

Warm welcome, we are thrilled to have Mr. Justin to be part of our TI-M family. Justin graduated from the University of London and thereafter obtained his Certificate of Legal Practice. He was admitted to the High Court of Malaya in the year 2020. In 2022 he joined Transparency International Malaysia hoping to make a lasting impact in our fight against corruption and contribute to our efforts to implement greater measures of accountability and integrity in businesses, governments and civil societies.

