

Breaking the Silence: The Efficacy of Whistleblowing in Improving Transparency

Siti Noor Azmawaty Abd Razak

Faculty of Accountancy
Universiti Teknologi MARA (UiTM) Kelantan
Kelantan, Malaysia
azmawaty588@kelantan.uitm.edu.my

Wan Nurul Basirah Wan Mohamad Noor

Faculty of Accountancy
Universiti Teknologi MARA (UiTM) Kelantan
Kelantan, Malaysia
basirah66@kelantan.uitm.edu.my

Maheran Zakaria (Associate Professor, Dr.)

Faculty of Accountancy
Universiti Teknologi MARA (UiTM) Kelantan
Kelantan, Malaysia
maheran@kelantan.uitm.edu.my

Abstract - There has been a substantial increase in the recognition of the importance of whistleblowing as a means of reducing corruption. It could enhance a country's Corruption Perception Index (CPI) scores and indirectly enhance her dignity. While recognizing that whistleblowing is a powerful tool to prevent and detect malpractices, very few decided to blow the whistle due to the fear of retaliation, legal liabilities and cultural oppositions. These barriers should be removed in order to internalize whistleblowing as a positive means of improving transparency in the organizations, over and above the government as a whole.

Index Terms - corruption, transparency, whistleblowing, barriers to whistleblowing

I. INTRODUCTION

Whistleblowing has been a major issue in the ethics literature. Whistleblowing is defined as disclosure actions by members of an organization of illegal and immoral acts perpetrated by the organization and organization members to persons or organizations that may bring about a change (Boatright, 2003). Most of the time corruption episodes occur in secrecy, thus only individuals engaged in corrupt affairs or those working closely with them in an organization are in the best position to report (Dyrmishi et al., 2013). Pursuant to that, whistleblowing is widely accredited as one of the most powerful method to prevent and detect corruption and malpractices (Transparency International, 2009). Nevertheless, while recognizing that whistleblowing is a powerful tool to prevent and detect corruption and malpractices, very few decided to blow the whistle. The refusal to report wrongdoings that has been observed may be closely related with the fear of retaliation by the employers or persons being alleged for malpractices (Paul & Townsend, 1996; Kaplan & Kleiner, 2000; Qusqas & Kleiner, 2001; Gundlach et al., 2008; Transparency International, 2009).

Whistleblowers Protection Act (2010) has been introduced in Malaysia as part of the struggle to combat corruption and malpractices in the public and private sector through providing protection to whistleblowers. These include confidentiality of information of the informer, protection against harmful actions and immunity from civil and criminal actions that may be faced by the informant after making a disclosure to the Enforcement Agency. However, ever since the Act was introduced, the ranking of Malaysia in Corruption Perception Index (CPI) has not significantly improved (The Bertelsmann Foundation (2014); Freedom House (2013)) which may indicated stronger measures need to be enforced in Malaysia in fighting corruptions.

The aim of this paper is twofold. Firstly, to explain some cases in Malaysia that may lead to the increasing consciousness on whistleblowing and secondly, the paper aims to discuss the some deterrents of whistleblowing act by reviewing literatures relating to whistleblowing actions which has been publicly debated over the recent years.

II. MALAYSIA ACCORDING TO TRANSPARENCY INTERNATIONAL

Malaysia's score on the Transparency International's Corruption has slightly increased over the past 4 years. The slight improvements indicated that the government initiatives may have shown a positive result, even though still maintaining position in the mid-range rank. Malaysia has improved in CPI ranking beginning 2011 onwards. In 2011, despite various initiatives to address corruption, which includes Corporate Integrity Pledge for the business sectors, the CPI results indicated that the efforts are not good enough to combat corruption, especially 'grand corruption'. The 'grand corruption' includes awarding mega projects without an open

tender or competitive bidding, limited access to information that contributes to a culture of secrecy and lack of transparency, allegations of inflated pricing in military purchases and the continued close nexus between business and politics in Malaysia. Based on Transparency International (TI), 40% of the public perceives that corruption levels have stayed the same over the past three years with the police and political parties has been identified as the most corrupt institutions.

In 2012, Malaysia has climbed up to be ranked at the 54th place. Even though the country's position continues to be in the mid-range, the results indicated a slight improvement. According to Datuk Paul Low (2012), the president of Transparency International Malaysia (TIM), despite various government initiatives, the respondents did not experience a significant decrease in corruption. This was evidenced by one of the question in survey relating to bribe, "During the last 12 months, do you think that your company has failed to win a contract or gain new business because a competitor has paid a bribe?" whereby 50% of the respondents answered "Yes", which scored amongst the highest in comparison to other countries within the same range of position ranking. During 2012, one of the suggestions for improvement was to further improve whistleblower legislation to provide wider protection to whistleblowers and encourage more whistleblowing. Malaysia has improved its standing in the ranking in 2013 (from 54th to 53th). The country's position is still in the mid-range and this situation call out for stronger measures and enforcement to be in place to eliminate entrenched interests and processes that support abuses. In the previous year of 2014, Malaysia has further improved its country ranking by climbing up to 50th position. Following this, TIM urged the government to take up the recommendations to ensure greater improvements, including putting more emphasis on the misuse of public funds as highlighted in Auditor-General Reports (Astro Awani, 2014).

III. TRANSPARENCY ISSUES IN MALAYSIA

The discoveries from TI can be further enlightened by some controversies that evolved around Malaysia in relation to misuse of public funds, corruption, bribery and lack of transparency in the government management. Take for example the recent controversy surrounding 1Malaysia Development Bhd (1MDB) in relation to the secrecy of trading and arrangements involving PetroSaudi Holdings (Cayman) Limited (PSI Cayman), a wholly owned subsidiary of PetroSaudi International Limited (PSI), a company incorporated in the Kingdom of Saudi Arabia. Based on a report by the Sarawak Report (March 2015), suspicious transaction noted as reported in 1MDB annual report for the year ending 31 March 2010 was that the joint venture arrangement between 1MDB and PSI (Cayman). 1MDB was supposed have 40% of equity interest, which was later (final day of accounting period) sold and converted into notes receivables (loan facility). This has raised questions on many other matters such as the window dressing practices in relation to the loan and also credibility of the auditors upon conduction their audit during the financial year ending 31 March 2010. In an exclusive interview between Sarawak Report and the former Prime Minister Tun Dr Mahathir Mohamad dated 19 January 2015, the former Prime Minister had expressed his frustration with 1MDB's announcement of full redemption of RM8.2

billion of Cayman funds (Malaysiakini, January 2015) by questioning the whereabouts of the money. He raised the serious questions about the integrity of the fund's investments and refused to let the matters drop. Tun Dr Mahathir Mohamad also acknowledged that there is a major structural issue in the way Malaysia's public funds were managed, which is lack of transparency that allow little or no scrutiny of the 1MDB funds.

Another case that has heightened the needs for transparency among Malaysians was the case of National Feedlot Centre (NFC). The report of Auditor-General's 2010 highlighted NFC failure to meet the annual demand of beef production target set by the Government. As reported by The Star Online (June 2013), the centre was supposed to produce 38,600 heads of cattle in 2010 but it fell short as the implementation of Entrepreneur Development Programme (EDP) involving 130 satellite farms had yet to be implemented back in 2010. Concern also arose as RM250 millions of soft loans were approved in December 2007 to NFCorp, of which as at March 2010 RM134.7 million was disbursed by the Ministry of Finance (MOF) to NFCorp. The loan was to enable the corporation to start a national feedlot centre in Gemas, Negeri Sembilan. The repayment tenure is from 2012 to 2028. Furthermore, in the press release by the Auditor General dated 25 January 2012, some weaknesses in the implementation of NFC have been identified. Those weaknesses have been duly highlighted in the Auditor's General report in 2010. The New Straits Times online (November 2014) has reported that the Government is taking legal action against NFCorp for its failure to repay 2014's loan instalment. The Prime Minister, Dato' Seri Najib Tun Razak who is also the finance minister has acknowledged that until September 2014, NFCorp had only repaid RM34.98 million as part of its 2012 and 2013 repayments. The company also failed to meet up 90-day extension given by the Government. Pursuant to that, government issued an Event of Default Declaration Notice on to terminate the agreement and subsequently proceed with legal action. In the meantime, the president of TIM, Dato' Akhbar Satar, in the press release dated November 2014 urged the Government to seek damages for this serious breach by the NFCorp and all related offenders. TIM urged the Government to publish a list of borrowers online on their status, amount borrowed, progress, loan repayment to boost transparency and accountability. TIM also proposed to the Government to be more transparent on the process of giving soft loans to cut down the possibility of misappropriation, corrupt practices, to prevent nepotism and ensure proper protection of public fund (Dato' Akhbar Satar, 2014).

Earlier than 2010, Port Klang Free Zone (PKFZ) project has made the headlines in Malaysian newspapers for all the wrong reasons. In May 2009, audit report for PKFZ project was released concluded that weak governance and project management by the Port Klang Authority (PKA) were the two major factors that severely undermined the viability of the project (PKFZ Audit Report 2009). Originally, Malaysian Cabinet approved the PKFZ project in 1999 as part of the strategic plan to transform Port Klang into a national load centre and regional transshipment hub. Problem arose when PKA failed to alert the Cabinet about its inability to finance the project. The government was only alerted in 2007. According

to the report by the auditor PricewaterhouseCoopers (PwC), PKA had realized since May 2004 that it would be unable to meet the Cabinet's condition of self-financing. Several key issues relating to weakness in governance has been identified in the audit report. Amongst are relating to variation orders (approved changes in the specifications of a project) totaling RM62.5 million had been accepted to date by PKA management without referring to the board and appointment of key project consultants were made by PKA management without the approval of the board. In addition, other oversights by PKA include the bypassing of various government checks and balances which includes failure in vetting of agreements by the Attorney-General's Chamber despite the significant cost, failure to adhere to the treasury guidelines on vetting agreements by the attorney-general and approval of variation orders by the Finance Ministry and letters of support were issued by the transport minister without Finance Ministry approval. The audit report also highlighted issues on project management such as entering contracts on the basis of estimated amounts and without detailed building plans, development contracts totaling RM1.8 billion were awarded to the main developer Kuala Dimensi Sdn Bhd (KDSB) without competitive bids and the appointment of a quantity surveyor nine months after construction commenced. The controversy surrounding PKFZ has raised serious concern about transparency and accountability amongst Malaysians. Responding to the issues, TIM has insisted for investigations to redress the problems in PKFZ/PKA and acclaiming proper systems, procedures and oversight to ensure that there are no further abuses of power or misuse of public funds by those who have been entrusted with power (TIM, 2009).

IV. WHISTLEBLOWING AS A MEAN TO IMPROVE TRANSPARENCY

The cases discussed above highlight the urgent concern by Malaysian citizens for accountability, integrity and transparency of any business deals, particularly when the source of funds came from the Government. Costigan (2005), who is the chairman of Transparency International Australia highlighted that the role of whistleblowers has become the public debate in the recent years due to increasing concern about the diminishing openness of Government, their reluctance to comply with the spirit of freedom of information legislation and its abhorrence to any form of independent scrutiny of its activities. Costigan (2005) also considered that the whistleblowing act should not be regarded as a normal process of informing the public, instead it should be the last course of action to be taken. Nonetheless, TI (2013) in its report about legal protections for whistleblowers in the European Union (EU) come to an agreement that whistleblowers are important players in national and global efforts to fight corruption. Many times careers and personal safety of the whistleblowers are at risk so as to expose wrongdoing that threatens public health and safety, financial integrity, human rights, the environment, and the rule of law. By disclosing information about such misdeeds, whistleblowers have helped save countless lives and billions of dollars in public funds while preventing emerging scandals and disasters from worsening. While recognizing that whistleblowing is a crucial resource in modern efforts to pursue public integrity (Brown, 2008), many employees who

observe wrongdoing in the workplace must decide whether to speak up or remain silent (Edwards et al, 2009).

Oakley and White (2006) submitted that institutional check on corruption might not be successful without effectively managed whistleblowing. Recent study conducted by Ogunbamila (2014) in Nigeria indicated that country's CPI scores increased with the percentage of individuals who whistle blew corrupt acts. For example, in 2001 Nigeria was rated the second most corrupt country in the world with a CPI score of 1.0 and the percentage whistleblowers was 26.8. However, the CPI score increased to 2.4 in 2011 when the percentage of individuals who reported corrupt acts increased to 41.3. As the whistleblowing accounted for 83% changes in the country's CPI score, this study has shown that whistleblowing could be a viable option to combat corruption if it is effectively managed.

The importance of whistleblowing in combating corruption and malpractices has been widely acknowledged by many organizations and has become one of the area of interest for many researchers in ethics literature over the years. While previous studies emphasized more on the determinants of whistleblowing, the consideration of what deter individual's actions to disclose observed wrongdoings and misconducts might be more eloquent in encouraging whistleblowing and subsequently improve transparency.

V. BARRIERS TO WHISTLEBLOWING

One of the largest barriers in today's organizations against whistleblowing is the retaliation against the disclosure (Ethics Resource Centre, 2012). The law defines retaliation as an employer or his agents act adversatively against an employee for opposing an unlawful employment practice or participating in any investigation, proceeding, or hearing related to such a practice (Cortina & Magley, 2003). Retaliation can be in many forms where some employees who blew the whistle have consequently being downgraded from their current position, while some others have to complete extra works and works that required news skills or qualifications (Bok (1980, p. 278). Another more severe form of retaliation involves adverse work-related actions ranging from discharge, involuntary transfer, demotion, poor performance appraisal to deprivation of work-related benefits such as perquisites or overtime opportunities which further resulted in strained relationships between whistleblowers and supervisors (Cortina & Magley, 2003; Rehg, Miceli, Near & Van Scotter, 2008). In another study, Rothschild & Miethe (1999) interviewed whistleblowers in US and concluded that organizational retaliation against whistle-blowers is severe and common in which about two thirds of the whistleblowers samples experienced job losing and force retirement, negative job performance evaluations, close monitoring by supervisors, being criticized and ignored by coworkers and getting blacklisted.

Retaliation can vary from minor harassment in certain cases to the extremity of putting one's life at stake. In a typical case, the employee who blows the whistle would be put under pressure to withdraw his claim and refrain from further disclosures. At times, retaliation becomes extreme as Satyendra Dubey was murdered after he courageously blew the whistle on corruption in the construction of a major highway project in Gaya, Bihar in 2003 (Srividhya & Stalin, 2012). The strength

of potential retaliation is likely to influence an individual's decision to blow the whistle (Liyanarachchi & Newdick, 2008). The general pattern is that the harsher the retaliation, the less likely an individual is to blow the whistle. Employees take cues about the consequences for reporting from the experience of others who have reported wrongdoings and as a result, they will refrain from coming forward when they have concerns. In tandem with previous studies by Chassang & Miquel (2012) and Near, Rehg, Van Scotter & Miceli (2004), whistleblowing was associated with some risks, which may discourage whistleblowers from reporting corrupt acts. This might be because the whistleblowers felt that their reports might not enhance the outcome of the organization's fight against corruption but end in serious consequences for them (Cortina & Magley, 2003).

Despite the fact that most jurisdictions around the globe have legislation protecting whistleblowers in place, there are still significant legal barriers to whistleblowing in several countries (Banisar, 2011). Employees in nearly every company are prevented from expressing their personal opinion or revealing any internal information, as part of their duty of loyalty and fidelity to the employer. Many civil service acts require information collected to be kept in confidence. For example, the Australian Public Service Code requires that public employees not to disclose any private information or if "it is reasonably foreseeable that the disclosure could be prejudicial to the effective working of government" (Banisar, 2011). A further barrier of disclosing wrongdoings can be libel and defamation acts. Power figures and senior officials use their power to threaten the whistleblowers as they can use the court systems to their advantage. In Singapore, National Kidney Foundation (NKF) suppressed the whistleblowers from revealing wastage of money on first class tickets and excessive salaries by using defamation laws and forced apologies. The story was finally fully disclosed after the NKF sued a major media company who refused to back down (The Straits Times (Singapore), December 2005). Meanwhile in Malaysia, NFCorp filed a lawsuit against the Public Bank stating that its business reputation and credibility had suffered irreparable loss and damage as a result of the security breach of the Banking and Financial Institutions Act 1989 (BAFIA) by the bank (The Star, May 2014).

Besides, there may also be secret laws in institutions that generate a significant barrier to anti-corruption efforts by generally prohibiting the disclosure of information without permissions. In Kenya, the whistleblower who revealed fraud worth billions of shillings in the Goldenberg affair was fired and charged under the Official Secret Acts (OSA) (The Standard, October 2004). In Malaysia, Mohd Ezan Mohd Noor was prosecuted in 2000 under the OSA for releasing police reports of corruption by high level government officials (The Star Online, April 2004). In London, a whistleblower who revealed that the London police force had released incorrect statements regarding the shooting of an innocent man was also arrested (The Times, January 2006). These kind of legal restrictions are often used to punish whistleblowers and deter further potential whistleblowers from speaking out.

On a different note, cultural opposition also act as a deterrent to whistleblowing. According to Banisar (2011), the

disclosure of information to outsiders is perceived as a disloyalty and therefore, whistleblowers are seen negatively as "sneaks", "narks", or "informers". This situation is consistent with Rothschild & Miethe (1999) who explains in his book, Whistleblowing at Work that many people see the whistleblower as a "snitch," or an "a lowlife who betrays a sacred trust largely for personal gain". Even in the absence of formal rules, the organization and cultural norms can place significant pressure on whistleblowers in which they are very likely to encounter hostility and alienation (Banisar, 2011). Cortina & Magley (2003) reported that harassment, name-calling, ostracism, blame, threats and the silent treatment are amongst the example of social retaliation victimization that deter individuals from disclosing any wrongdoings in their workplace.

Previous study by Rehg et al. (2008) reported that lack of support from others served as a major hindrance to whistleblowing. When whistleblowers do not receive support for reporting corrupt acts they feel like an outcast. Employees who do not want to be treated as an out-group might be discouraged from engaging in whistleblowing, especially if corruption is common in the organization (Cortina & Magley, 2003). Studies have demonstrated that, apart from perceived helplessness, fear of victimization and other risks associated with whistleblowing can discourage employees from engaging in whistleblowing or reduce whistleblowers' willingness to disclose subsequent corrupt acts (Chassang & Miquel, 2012; Near et al., 2004). Recently, Ogunbamila (2014) found that majority of the respondents were discouraged from blowing the whistle because of social and psychological factors such as the feelings that whistleblowing would not bring desired change, fear of being ostracized, the perceived stress associated with being a witness to corrupt acts and so forth.. These potential social sanctions for the disclosure of information place significant pressure on individuals and deter them from exposing observed misconducts.

VI. CONCLUSION

There has been a substantial increase in the recognition of the importance of whistleblowing as a means of reducing corruption and defusing dangerous situations by improving the disclosure of information about illegal, dangerous or unethical activities by government and private organizations. However, most of the misconducts remained untold due to fear of retaliation by whistleblowers, the existence of secret acts and other legal liabilities as well as the social norms as discussed in the previous section. The enforcement of existing whistleblower rules, especially of credible protection schemes for public sector whistleblowers and the communication channel for whistleblowing should be strengthened especially in organization that hold public stewardship. In conclusion, there is no doubt that the significance of whistleblowing has been widely acknowledged by organizations all over the globe. The paper is trying to promote that effective whistleblowing management by removing its barriers will enhance transparency that will eventually lead to improvement in the country's CPI index. As for future research, this paper may provide an avenue for a well-constructed quantitative study to prove the association between eliminated barriers of whistleblowing and transparency empirically.

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