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RETHINKING HIGHER EDUCATION SERVICES AND THE COMPLAINT HANDLING FRAMEWORK IN MALAYSIA

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ABSTRACT

In the last few decades, Malaysia has become a global hub for higher education services. Policies and programs have been put in place to improve the higher education system in the country and attract more international students. This development needs to be aligned with an effective dispute resolution framework to ensure the continuous development of the Malaysian higher education sector. The methodology employed in this paper is a doctrinal method based on the nature of the discourse. To examine the relevant higher education concepts and dispute resolution framework, research papers pertinent to the subject were analysed. In addition, relevant legislations were consulted to determine the adequacy of the existing legal framework

for dispute resolution in the higher education context in Malaysia. The main objective of this paper is to examine the nature of education services and the existing dispute resolution mechanisms in the Malaysian higher education sector. The paper will explore education services as either a “public good” or a “private good” and whether students are consumers in the real sense and have consumer rights. This research establishes that although scholars have often argued as to whether or not students are consumers, in Malaysia and other Asian countries, students are perceived as customers, and therefore, the interest, welfare and satisfaction of students must always be of utmost priority. A thorough study of the existing laws reveals that there is an inadequate provision in the education laws in Malaysia, especially regarding the mechanisms of dispute resolution in its higher education institutions.

Keywords: Higher education, complaint handling, dispute resolution, ombudsman, Malaysia.

INTRODUCTION

Higher Education is at the core of national development due to its impact on research, innovation and capacity building. It grants young people the opportunity to have a career and earn a living (Rosenberg & Nelson, 1994). Higher education institutions (HEIs) serve as a solid link between industries and universities, and is especially important in the context of Research and Development (R&D). The R&D thrust has become the basis of developments in technology and information technology.

This paper is an attempt to understand the nature of Higher Education services and how these services can affect the welfare of students. It is guided by the underlying basic principle that students must not only get value for services, but also unrestricted access to effective complaint and redress mechanisms without any fear of victimization. While disputes are inevitable, when it arises among individuals in a society, it is necessary to provide an effective resolution framework. In universities, colleges, polytechnics and other HEIs, students who have complaints tend to lodge these complaints with their lecturers, heads of departments or deans of faculties (Jackson et al., 2010). These officers are mostly either less equipped to handle the complaints or are loyal to the institution or their employer. This may lead to the students

voicing their grievances on social media platforms or resorting to legal action; however, both these modes may damage the reputation of the HEIs and therefore, will turn out to be a great disadvantage to the welfare of the students concerned.

It is against this backdrop that this paper seeks to address the following questions: what is the status of students and how best can student complaints be handled in Malaysia HEIs? Are students subject to consumer protection laws similar to those for goods and services? If yes, can they complain when dissatisfied with resources in HEIs? How effective is the existing legal framework for dispute resolution in the Malaysian Higher Education sector?

The methodology employed in this paper is doctrinal legal research and is based on the nature of the legal and conceptual discourse. To examine the relevant higher education concepts and dispute resolution framework, relevant research papers on the subject are analysed. We perform a content analysis of relevant legislations such as the Education Act 1996, National Council of Higher Education Act 1996, National Higher Education Fund Corporation Act 1997, The Universities and University Colleges (Amendment) Act (UUCA) 1996, and the Private Higher Educational Institutions Act, 1996 (Act 555) with the aim of determining the adequacy of the existing legal framework for complaint handling and dispute resolution in Malaysian HEIs.

RESULTS AND ANALYSIS

The analysis carried out in the present study has been focused on the concept and practice of higher education services, and the public goods *vs.* private goods debate. This also has a direct bearing on the status of students in the higher education sector and their right to complain about services. This discussion is the foundation for ascertaining the complaint-handling framework currently available to students of HEIs in Malaysia.

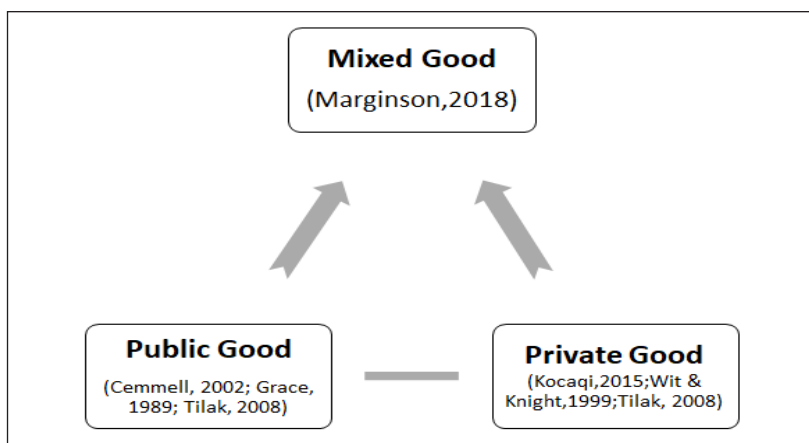
Higher Education Services in Malaysia: A Conceptual Framework

Malaysia gained independence in 1957 and one of the major focuses of the government was to provide quality higher education for Malaysians. Before independence, Universiti Malaya had been

established as an offshoot of the King Edward VII College of Medicine, which was established in 1905 in Singapore. Following the establishment of Universiti Malaya (UM), other public universities were established to cater for the demand for higher education and to contribute to national development. Amongst these universities are Universiti Sains Malaysia (USM) in 1969 and University Kebangsaan Malaysia (UKM) in 1970. This historical basis has helped to shape the nature of education services in Malaysia. Later on, there was further legislation to establish private universities and colleges. This section discusses the arguments put forth on the nature of education services based on a literature review. This is as illustrated in Figure 1.

Figure 1

Development of a Mixed Good



Education Services as “Public Good”

To determine the appropriate framework for dispute resolution in any sector, it is important to determine whether education services are considered a “public good”, “private good” or “mixed good” and the role or parties. Paul A Samuelson (1954) defines “public good” as goods and services that are “non-excludable” and “non-rivalrous”. In explaining “non-excludable” and “non-rivalrous”, Jandhyala B. G. Tilak has this to say:

such goods cannot be provided exclusively to some:
others cannot be excluded from consuming them;

secondly, non-rivalrous means their consumption by some does not diminish other people's consumption levels of the same goods.(Tilak, 2008a).

From the above, it is clear that products regarded as public goods are for general consumption of every member of a society, with the exclusion of no one. The government is mostly responsible for such products or services and justifies subsidy regimes in education services. An undisputable public good is national defence, roads and other infrastructures, excluding tolled highways (Cemmell, 2002). Every citizen or resident of a nation has the right to be provided with adequate security. The military and other para-military forces in a country are therefore, regarded as providing a public good. According to Elena Kocaqi, a public good must have three features. They are: "beneficial consumption; no exclusion of this good; externalities - public goods impose costs or benefits on others." (Kocaqi, 2015). The characteristics outlined by Elena reaffirms Samuelson's criteria of non-excludable and non-rivalrous with the addition of beneficial consumption and externalities also known as social amenities. A public good therefore, belongs to everybody equally without exception.

According to Tilak (2008b), equal availability to all, equal utility, and zero "marginal cost of producing public goods" are what characterize a good as a pure public good. He further stated that goods that do not have all the above qualities may be termed as semi-public goods or quasi-public goods. One of the foremost proponents of higher education as a public good is Kant, a sixteenth-century author who defines faculties as "smaller societies, each comprising the university specialists in one main branch of learning" (Kant, 1992). The researcher sees universities as an institution where the thought and "critical reason" of individuals are shaped and protected (Williams, 2016).

Scholars have argued on the proprietary or otherwise of referring to education as public good due to the recent development in the educational sector (Cemmell, 2002; Grace, 1989; Tilak, 2008b). Globalisation and privatisation of education in the last two decades have shifted the funding of the educational sector from solely the government to Public-Private funding. Malaysian legislature, for instance, enacted the Private Higher Educational Institutions Act in 1996 which led to the establishment of private HEIs in the country. Other scholars are of the strong view that higher education is only

a public good and the controversy surrounding its public nature is unjustified (Tilak, 2008a). Next, the discussion that follows turn to explore what scholars have to say about education services as a private good.

Education Services as “Private Good”

According to Kocaqi, the majority of scholars unanimously agree that elementary education and secondary education can be categorized as a public good. In the last three decades, there has been a recent shift in Higher Education services which appears to be more privatized hence becoming a private good (Kocaqi, 2015). Kocaqi considers the idea of higher education as a private good from the business point of view: “The business view sees higher education as a private business linked with the personal benefits of people that want to be educated. As long as the benefit is personal, and the subsidy of this personal education must be made by private money, not by public money” (2015).

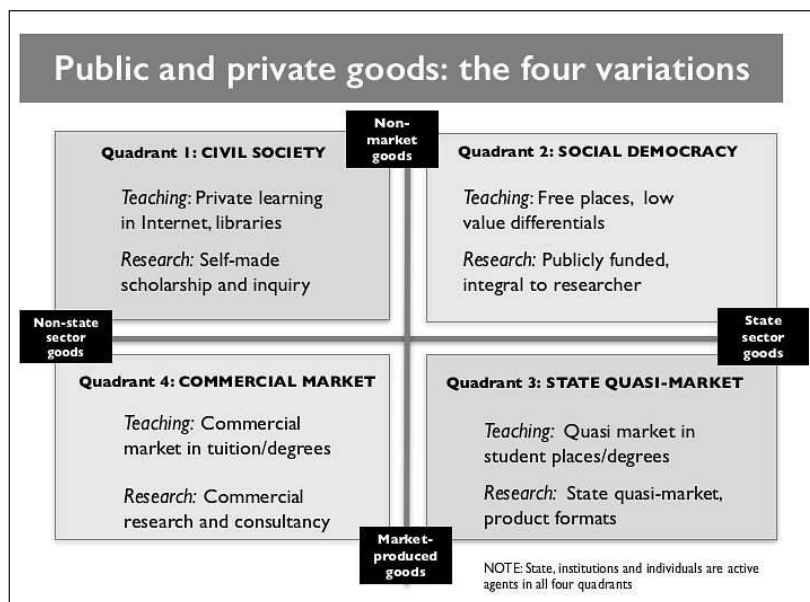
According to Knight, educational policy has changed from a cultural or developmental initiative to the point where it is now seen as an export product (Wit & Knight, 1999). This makes higher education a private good with the pros and cons entailed in the issues about the quality of higher education. Tilak (2008a) opines that the commoditization of higher education is seen as a profitable way to make large monetary profits in domestic and foreign markets. These groups regard higher education primarily as a private good, a tradable asset subject to the whims of national and foreign markets. Tilak (2008b) further states that treating higher education as a product is much more difficult and riskier than it seems. It could have a host of consequences for higher education.

Education Services as “Mixed Goods”

Having discussed the concepts of public good and private good, it is important to bring the two concepts together to determine the area of confluence. It is necessary to examine Marginson’s (2018) Quadrant of public and private goods where the two concepts are explained using four quadrants. Quadrant 2 is the pure public goods, entirely funded by the government and is titled social democracy. Quadrant 4 on the other hand, is pure private goods where the foundation is commercial concerns, and the research and other activities are for commercial purposes.

Figure 2

Quadrant of Public and Private Goods in Higher Education



Note. Source is Marginson (2018).

The remaining two quadrants are the intermediate levels. Although Quadrant 3 is privately owned, it operates with the full control of the state. Quadrant 1 is a special provision of the state for public use. It is put in place to serve those outside formal institutions. Therefore, while Quadrants 1 and 2 are fully funded, and controlled by the government without any special focus on commercialization, Quadrants 3 and 4 are privately owned and commercialized. Figure 2 gives a vivid picture of the ideal nature of modern higher education services. It clearly defines the historical notion of higher education as public goods in Quadrants 1 and 2, pure private goods in Quadrant 4 and a “State Quasi Market” in Quadrant 3. When education is perceived as a public good, regarding students as customers would be incorrect. However, referring to education services as a private good has led to the debate on the status of students in higher education. The next section, therefore, addresses the question of whether or not the designations “customer” or “consumer” is suitable as a label for the status of the student of a HEI.

STATUS OF STUDENTS IN RELATION TO HIGHER EDUCATION SERVICES

The idea of students as consumers and/or customers has been the subject of debate closely linked the issue of the nature of education services. It is important to note that the terms “customer” has been used interchangeably with “consumers” in several policies and research contexts and this applies to this paper as well. This section examines the concept of students as customers, the debates stemming from the concept and the position HEIs in Malaysia has taken in the debate.

Students as Consumers in the Context of Higher Education in Malaysia

The education sector in Malaysia is significant to the Malaysian economy. The Malaysian government has formulated education policies and continues to improve these policies and programs for the sector. The most recent is the Malaysia Education Blueprint 2013–2025 (Malaysia, 2012). The goal of this policy is to develop an education system that will provide access to education, compete favourably with other universities across the world and attract international students. Although the goal of having 200,000 international students in Malaysia was not achieved in 2020, as only 13,100 international students were in the country as of December 2019 (“Can Malaysia achieve 250,000 foreign students by 2025?”, 2019).

This section focuses on students, both Malaysians and international students as consumers in the Higher Education sector and the need for the sector to make adequate efforts in not only ensuring that students get value for money, but also provide an avenue to complain when there is any form of dissatisfaction. Wagner and Fard (2009) researched Malaysian students to determine the factors affecting enrolment in Higher Education. It was found that “cost of education, degree content and structure, physical aspect and facilities, the value of education, and institutional information” are key factors directly influencing the decisions of students to pursue their education in institutions of higher learning. Ensuring local and international students who choose to further their education get the utmost satisfaction is important for the development of the higher education sector. They hypothesize that an effective complaint handling framework is a vital tool for achieving student satisfaction and retention.

One of the main arguments advanced by critics of the idea of “student as consumer” is that if students are treated as consumers, the sanctity and dignity of academic services would be jeopardised. Researchers agree that education is much more than a product, or a service provided in return for a fee. These scholars see the act of teaching as not just giving value in exchange for a tuition fee offered by a student, but also contributing to the public good and the development of society. For example, Spain (1992) a lecturer at the University of Virginia, characterised his collaborative efforts with a former student on a project as “public service for the Commonwealth of Virginia.” In the same vein, Warner and Seaman (1990) described how staff and students from the Department of Meteorology provide public forecasts for the Pennsylvania area as the public nature of education service. The department’s staff provides a 7 minute forecast to the local public television network on weekdays, which reaches 50,000 to 350,000 viewers daily, depending on the day of the week and weather conditions.

Yusoff et al. (2015) conducted research to determine the factors affecting the satisfaction of business students in various private HEIs in Malaysia. The twelve major factors discovered by the authors were:

“student assessment and learning experiences; classroom environment; lecture and tutorial facilitating goods; textbooks and tuition fees; student support facilities; business procedures; relationship with the teaching staff; knowledgeable and responsive faculty; staff helpfulness; feedback; and class sizes.” (Yusoff, McLeay & Woodruffe-Burton, 2015).

In the same vein, Lai et al. (2015) identified the need to merge academic, IT and other university services, in ensuring student satisfaction with the services provided by HEIs in Malaysia. Hamid and Nick (2019) compared student perceptions of service quality in public and private HEIs in Malaysia. The authors found that the perceived service quality in private HEIs is much lower than that in the public HEIs. A key factor in satisfying consumers is to ensure that the perceived value they get from the education services is equivalent to, or higher than the price. Students of HEIs are no exceptions. When the value they get is for any reason lower than the price, dissatisfaction occurs which may then degenerate into a huge conflict if not properly handled. The value for money paid is however, vague from student

to student. These include job placement, sports facilities, high grades and behavioural patterns, among others.

To ensure value for money, Azman et al. (2005) examined the impact of student engagement as an important factor in effective higher education practices. The paper also identified the principles of good practice in student engagement and these included: encouragement of student-faculty contact, encouragement of cooperation, encouragement of active learning and provision of prompt feedback.

Students as customers – A Critique

There has been a lot of debate as to whether or not students are customers. According to Clayson and Haley (2005), if students are seen as customers, there is a need to determine what the product is. For a customer to exist, a product must exist. The authors argued that education is most likely the product when students are perceived as customers. The educational institutions are seen as capable of designing the nature of the products. Following the notion that the “customer is always right,” it follows that the student as customer perspective assumes that the instructor must be wrong when a dispute ensues between a student and an instructor. For example, an instructor’s tenure was terminated at Temple University due to a dispute between the instructor and a student (Clayson & Haley, 2005).

Eagle and Brennan (2007) discouraged the over-simplification of the concept of “students as customers”. The authors argued that the concept if not handled in a sophisticated manner would be a disadvantage to the students themselves. Students should not be seen as applying to higher education just to get a degree and eventually get a job through the degree acquired as a value for the fees paid. The saying “customer is always right” is seen by the authors as not so appropriate in the educational sector. The authors submitted that the term “customer” should be used carefully when referring to students. A similar position is held by Svensson and Wood (2007) who believed that students should not be seen as customers in a university, but as citizens. Svensson and Wood have argued that the relationship of a student with the university is similar to that of a citizen and a country. As soon as a student enrolls in a university, he has basic rights that must be protected just as the rights of a citizen in a country is guarded. At the same time, students have certain responsibilities during the pendency of their admission and studentship.

The comparison of the relationship between the student and university authority with the citizen and government challenges the idea of the student as customer. As much as an educational institution would also be willing to satisfy students, their role should not be seen as comparable with a commodity trading company. In addition to paying fees, students have a lot more to do in the learning process to achieve the desired goal. Lomas (2007) identified the significant difference between the new system of education and the old practice. The author mentioned that government and its agencies see students as customers and strive to make policies and programs to ensure the educational system of the country is attractive to international students. Lomas (2007) studied the perception of the student by academic staff as a customer. The author found that most academic staff rejected the concept of students as customers. They do not consider education as a product or service. They dislike the approach of regarding education as a commodity, which could be put up for sale. Lomas (2007), however found that some of the academic staff are beginning to come to terms with the concept due to the evolving educational policies in the United Kingdom.

Proponents of Students as Customers

There is no doubt that students would like to be treated as customers for a number of reasons. According to Obermiller et al. (2005), in a study involving undergraduates of business schools and their professors, the recurrent issues and demands are: students demand respect; accessibility to professors; lecturer should listen and addresses legitimate academic and extra-curricular concerns; quality teaching; reasonable workloads; professors show concern for student success; the ability of the professor to impart important life skills to the students. (Obermiller et al., 2005).

The above responses as identified by the authors show the strong belief in students that if the faculty treats them as customers, they will get better and fair services. This is opposite to the perception of academic staff regarding students as customers, as such a view which would reduce the students' commitment to studies and may make them approach education like goods. Both the students and academic staff believed that the relationship between students and the university will evolve if the student/customer concept is embraced. Guilbault (2016) opined that students perceive themselves as customers due to the activities of the university system and government education

policies. These policies would make any onlooker conclude that students are customers. Students should be considered and treated as customers while ensuring that in the process of doing so, “academic integrity” and ethics are not lost. Guilbault’s position is a safe place in this ongoing debate.

From all indications, it appears to us that the “students as customers” debate implies that students when treated as consumers or customers will ensure that they get quality services and adequate protection. This implies that a proper and effective grievances handling mechanism should be provided within the educational system.

Students as Customers under Malaysian Education Policy

A review of the literature on Malaysia HEIs shows that students are regarded as customers. Several authors have viewed students as customers and supported the need for HEIs to provide quality services. Lai et al. (2015) in particular likened students to customers in the higher education enterprise. One of the central questions in Lai et al. (2015), was: “How do students, as customers, feel about their educational experience?” In the same paper, the authors referred to students as “university customers”. Rather than focusing solely on the university’s worth, the view of university students as customers will assist university management in prioritising and channelling resources towards increased customer satisfaction. Students are more likely to recommend university services to others if they believe the value is high.

Fares and Kachkar (2013) in a similar way see Malaysian students as customers. Each time the authors mention “students”, “customers” is written in either parenthesis or quotation. The authors conducted a study of students at the International Islamic University Malaysia (IIUM) and found that service efficiency, customer satisfaction, and university credibility all have positive effects on student loyalty. As a result, the higher the service quality, student satisfaction, and the image given by IIUM, the greater the students’ loyalty to the institution. Sim and Idrus (2003) view students and their parents as primary customers in the Malaysian education industry.

According to Ravinshankar and Murthy (2000), the most important stakeholders in the education structure are the students. The study by

Sim and Idrus (2003) is on students in the distance-learning mode of education. The authors are of the view that adult students in distance education programmes are the best judges of a program's efficiency. As a result, educational institutions must aim to please their consumers by offering high-quality education. If achieved, students will be able to help promote the school's programmes by recommending them to others.

Jalali and Islam (2011) view students as primary customers in the Malaysian education system. Overall, authors in Malaysia generally believe students are customers in the educational enterprise and students' satisfaction is fundamental to the overall development of the system. These authors are of the view that the interest of students must be given priority when determining the quality of services rendered to them. As stated in the introduction of this section, no position can be declared right or wrong. It depends on the perspective of each of the proponents. However, our analysis of the relevant literature, has found that the idea of "students as customers" is gaining popularity in Malaysia. Having established the position taken in the present study, it is now important to review the existing laws on higher education in Malaysia, particularly regarding the dispute resolution framework made available to students. Studies found that where there is a complaint officer, a non-responsive complaint system may lead to customers believing that registering complaints is an exercise in futility (Msosa, 2021).

DISCUSSIONS

The discussion in this section is based on the foregoing analysis and sync with the review of existing laws on Education in Malaysia. It will be a focus on the effectiveness of existing legislations on dispute resolution in HEIs.

Dispute Resolution and Complaint Handling in Malaysian Higher Education: A Review of Existing Laws

The 1990s witnessed a huge development in the global higher education system. The global trend influenced the development of policies and programs in Malaysian higher education. This did not only increase the number of universities (private and public) in the

country, but also improved the quality of service in these institutions and open up to international universities and students from outside Malaysia. The major legislations relevant to higher education in Malaysia includes the following: Education Act 1996, National Council of Higher Education Act 1996, National Higher Education Fund Corporation Act 1997, Universities and University Colleges (Amendment) Act (UUCA) 1996, and Private Higher Educational Institutions Act, 1996 (Act 555).

The Education Act 1996 (Act 550)

This is the principal legislation for the Malaysian education sector. It is general and has provisions for all levels of education ranging from kindergarten, primary, secondary and higher Education. Section 70 of the Act provides for higher education and made the Minister of Education responsible for policy directions and management (Section 70, Education Act 1996, Pub. L. No. 550 (1996)). The Act also has provisions for teacher education, and registration of educational institutions and pupils (Part IX, Sections 103 to 113 Education Act 1996).

Section 114 provides for the issuance of a teaching permit, which is required for any teacher to teach in schools. The Act further provides for the inspection of schools according to Part X, Sections 117 to 122 Education Act 1996. The main sections of the Act which are directly related to HEIs are sections 70 and 71. Section 70 empowers the Minister to provide higher education under the written laws. Section 71 however, prohibits the establishment of any HEI except under any written law. The Education Act has robust provisions for the effective running of Malaysian schools at all levels. Since it is not restricted to tertiary education, it is not surprising that it has no provisions for complaint handling for HEIs in the country. The next few pieces of legislation are specific to the regulation of HEIs in Malaysia.

The National Council of Higher Education Act 1996 (Act 546)

This Act was enacted in 1996 to establish the National Council on Higher Education and to provide for its functions relating to higher education and for matters connected therewith. The chairman of the Council is the Minister. According to Section 12 of the Act, the functions of the Council among others include planning, formulating and determining national policies and strategies for the development of higher education. The provision of this Act is mainly on the

establishment, functions and management of the Council to manage the higher institutions. This legislation supports the argument for education as a public good due to the central role played by the government through the Council.

National Higher Education Fund Corporation Act, 1997 (Amendment 2000)

Also important to support education services and access in Malaysia is the National Higher Education Fund Corporation Act. The main aim of this Act is to provide loans to Malaysian citizens to pursue higher education in Malaysia. This Act established the National Higher Education Fund Corporation or Perbadanan Tabung Pendidikan Tinggi Nasional (PTPTN). The main functions of the fund corporation include the management of higher education loans and ensuring their repayments. The corporation also prepares savings schemes while managing deposits for higher education in Malaysia (Section 9 National Higher Education Fund Corporation Act, 1997).

The process of applying for the PTPTN loans is through its official portal. For a student to qualify for a student loan, he must be a citizen of Malaysia and whose age is not above 45. They must also have received an offer letter to study courses approved by the Ministry of Education and PTPTN. There is a special condition for IPTS (private university) students. Before an applicant can get a loan for studies, they must ensure their choice of a particular course of study, is approved by the Malaysia Qualification Agency (MQA). The application must be done when the applicant's period of study remains at least 1 year and the applicant must open an SSPN account.

As seen in the criteria listed above, the goal of the Act and the establishment of the corporation is to support Malaysians who may find it difficult to pursue or continue their studies without funding. This is a great step in encouraging tertiary education in the country and a central determinant in education as a public service in Malaysia.

Universities and University Colleges (Amendment) Act (UUCA), 1996 (Amended 2009)

The UUCA was first enacted in 1971 to provide for the establishment, maintenance and administration of universities and university colleges. Section 14 of the First Schedule of this Act provides for the

medium of resolution of disputes between the authorities or between officers and authorities in the universities. These disputes are to be referred to the minister.

Section 14 of the Act addresses the process of resolving disputes between the authorities and officers of the university, either by the minister himself or by the Dispute Resolution Panel which has also been delegated that responsibility. Disputes relating to election into various authorities or bodies in the university are also to be referred to the minister, whose decision is final:

“If any question arises whether any person has been duly elected, appointed, nominated or co-opted to membership, or is entitled to be or to remain a member of any Authority or other body in the University, the question shall be referred to the Minister, whose decision thereon shall be final.” (Section 54 Universities and University Colleges (Amendment) Act 1996, n.d.).

However, no mention is made of the dispute resolution process among students, or between students and university officials. There is a brief mention of a student complaint committee in section 21A of the Act. The section establishes the Student Complaints Committee and makes the Vice-Chancellor the chairman. Other members of the committee include two persons elected by the student representative council; two persons elected by the university alumni and two university officers appointed by the board. Subsection 2 empowers the committee to make investigations or inquiries as regard the student complaint. The last clause of the question is however, ambiguous as it is unclear which statute the section refers to.

The Private Higher Educational Institutions Act, 1996 (Act 555) (Amended 2009)

This Act was established in 1996 to provide for the establishment, registration, management and supervision, the control of the quality of education provided by private higher educational institutions, and for matters connected therewith. This legislation marked the privatisation of higher education in Malaysia and it ushered in the private goods approach in education.

Sections 46 – 49 of the Act lay down the process of ensuring discipline and conduct of students. The Authority charged with the responsibility of maintaining discipline and conduct of students in private higher institutions is the Chief Executive, following the advice of the Registrar General. The Registrar General has the power to dissolve any student organisations that violates the provisions of any law designed to ensure the safety and security of the country, public order or the interest of students. It is expected that there should be provisions for student complaints in this Act as it is more recent than the UUCA. There is however, no such provision in the Private Higher Educational Institutions Act.

As numerous as the legislations and policies in Higher Education is, it is interesting to discover that there is little or no provision for the process of handling student complaints in HEIs. As stated above, the UUCA has a brief provision for a student complaint committee charged with the responsibility of investigating student complaints, but the procedure and process are said to be determined by the provisions of a statute. That statute is unknown and has created a huge gap in the legal framework of complaint handling in higher education in Malaysia.

It appears that the existing legislation on HEIs in Malaysia shows that education is both a public good, as well as a private good. Dispute resolution methods and procedures are not streamlined in the legislation and need additional internal measures within the HEIs. According to Kitchell (2020), there is a growing interest in the matter of allowing for pedagogical complaint around the world, as the higher education entrepreneur seeks more ways to satisfy their customer base, i.e., students. As a result, very few universities in Malaysia have established offices of the ombudsman. This will be discussed in the subsequent sections.

FINDINGS

The findings presented in this section will summarise the current measures adopted by a few HEIs in its effort to achieve effective complaint handling. There will also be a discussion of the features of the mechanism deployed by the institutions, as well as the criticisms which should be considered to improve the system. Perry (2020) is of

the view that it is important to determine the best practice in delivering an effective higher education complaint handling system. This is also the belief of most, if not all Malaysian HEIs that it is important to seek better ways to resolve student complaints.

Towards an Effective Dispute Resolution Mechanism in Malaysian Higher Education

A recent survey conducted among higher education students in Malaysia shows that university resources have a substantial impact on students' complaints (Omoola et al., 2022). As a result, there is a growing trend of universities adopting an ombudsman mechanism for the resolution of complaints among stakeholders. The first university to establish a university ombudsman office is the Universiti Sains Malaysia (USM). The office was established in July 2011 under the provisions of the university constitution. Independence, fairness, confidentiality and neutrality are the key principles of the office of the University Ombudsman.

Monash University, Malaysia is a branch of the main campus in Australia. The university has a robust provision for student complaints. There is a University Student Ombudsman (USO) established to hear and handle student complaints. On the university website, there is a detailed guide for students who would like to submit their complaints and seek redress for their grievances. The policy statement of the USO reads as follows:

“The University Student Ombudsman (USO) strengthens accountability within the University by contributing to a consistent and transparent approach to the resolution of student grievances, and for ensuring that students and staff are aware of the process for an independent review of unresolved complaints by the USO. The USO provides an independent and balanced review of student complaints that are included within the scope of the policy. The USO is not an advocate for the student or the faculty/department.” (“Monash University Malaysia, University Student Ombudsman Policy,” n.d.)

The principles of the USO are quite similar to those upheld by the USM Ombudsman Office. The International Islamic University

Malaysia (IIUM) also launched an Ombudsman Office in August 2020. In a public lecture, Professor Md Tahir bin Md Azhar explained to the audience that the establishment of the Office of Ombudsman and integrity was approved by the Board of Governors (BOG) in its meeting No. 55 dated 12th November 2019. The principles of the Office are the same as those enforced at the USM.

Features of an Effective Ombudsman Mechanism

For the effective operation of an Ombudsman Office, there are certain basic principles required to guide the activities of the office. These include the following: transparency, independence, informality, confidentiality, and neutrality (Fowlie, 2008). These qualities are mostly referred to as core principles of operation for Ombudsman offices. An Ombudsman Office is traditionally a watchdog for public offices and government institutions (Wille & Bovens, 2020). *Nemo dat quod habet* is a latin maxim which means “you cannot give what you do not have”. It reflects the need for an institution like the Ombudsman office with special characteristics to check and mediate between stakeholders.

The Ombudsman’s office must be transparent and independent. Confidentiality and neutrality are also very important qualities that must not only be possessed by an Ombudsman, but also seen to be possessed. This would instil confidence in those who make complaints to the office. Being independent and informal would allow the office to make just decisions or recommendations without any fear or favour (Rowat, 1973). Despite the novelty of an ombudsman in Malaysian HEIs, there are a few criticisms which if addressed can improve the current system.

Criticism of Existing Dispute Resolution Mechanisms

The previous section examines the bold steps taken by a few universities in the country in creating Ombudsman offices. At this point, it is important to state the criticisms of the current operation of the Ombudsman offices. These criticisms include issues, such as the reporting mechanism, review of decision, accessibility, inclusion and absence of a regulatory framework, among others.

1. Reporting: A fundamental feature of a standard ombudsman office is its periodic reporting to its stakeholders. The

instrument establishing an Ombudsman Office should include a provision making it mandatory to publish a yearly, biannual, or quarterly report. This will not only aid the transparency of the organization which is a key principle of any Ombudsman office, but also serve as publicity. Students will be aware of the activities of the Ombudsman office through the periodic report. The Public Complaint Bureau in Malaysia for instance issues an annual report. To ensure effectiveness and transparency, the existing Ombudsman Offices in local universities should publish periodic reports of the activities of the Ombudsman office.

2. **Review Mechanism:** A standard review mechanism should also be put in place. This review mechanism could be two-fold. The Ombudsman office is an independent body reviewing the process of handling disputes in each of the HEIs and a separate body to examine the activities of the Ombudsman Office. For an Ombudsman to be truly impartial and fair, it must be separate and independent from the university administration. This concept shall be elaborated on in other subsequent sections in this paper. The structure of the Office of Independent Adjudicator (OIA) in the United Kingdom allows for easy review. The OIA exists independently of the school complaints mechanism. In the UK, a student who approaches the office of Independent Adjudicator must establish that he had accessed the education provider complaint system. His dissatisfaction brought him to the OIA. This approach allows a student not only to appeal against his complaints, but also empowers the OIA on the method used in the HEI complaint system. The OIA could use the information obtained to review the HEI complaint system. In extreme cases, students who are dissatisfied with the decision of the OIA can proceed to request for a judicial review.
3. **Accessibility:** Access to justice begins with the ability to submit complaints physically, online and by other available means. The absence of accessibility in an Ombudsman Office would defeat the rationale for its existence. This boils down to the awareness of the students about the activities of the Ombudsman office, the professionalism of the Ombudsman and other staff of the office, and the ability to assure students and instil trust in them so that they could share their grievances without the fear of being criticized. Students who do not trust the system would find it tough to approach the office. Students can easily access

the Ombudsman office because of familiarity, assurance and trust.

4. **Litigation:** Litigation should not be a go-to process for any aggrieved student. It may however, be a last resort in a situation where the complaint could not be resolved by alternative dispute resolution channels. Therefore, including litigation and stating the specific courts with jurisdiction to handle the unresolved matter, using the relevant laws would be very appropriate. The judicial review process of the unresolvable matters by the Office of Independent Adjudicator (OIA) in the United Kingdom is an example of this.
5. **Legal and Institutional Risk (Institutional Reputation):** A lot is at stake for the university without a proper complaint mechanism. The world is now a global village. All that is required is an outburst from one or a few students of a university on platforms like Facebook, Twitter, Instagram and others, that the decades of reputation earned by a university can be ruined. No university would like negative news about it going viral on the internet. The importance of a proper framework for resolving disputes in our universities and colleges cannot be overemphasized.
6. **Lack of Regulatory Framework:** A law prescribing the process of managing higher education disputes should also establish a regulatory framework to monitor and enhance the role of Ombudsman offices, and advise the government on helpful policies that may improve the system.

There is the need for a robust and systematic review of the existing laws, taking cognizance of the best global practices.

CONCLUSION

The discussion in this paper has led to the conclusion that there is a lacuna in the legal framework of complaint handling in HEIs in Malaysia. The initiatives of universities such as USM and IIUM in creating Ombudsman offices lack efficient legal and regulatory support. There will be more effective procedures in the activities of the Ombudsman offices in the Malaysia HEIs if a robust regulatory framework is provided. It is recommended that the criticisms of the current dispute resolution mechanisms in Malaysian universities be thoroughly examined and then to urgently consider improving the

Ombudsman offices, or to create more such offices in the country's HEIs. It is also important that a solid legal framework is established to back the operation of the university ombudsman. This could be done by enacting legislations specifically for this purpose, or amending the existing ones. The impact of the Covid-19 pandemic all over the world since the beginning of 2020 has made obvious the need for online activities. University Ombudsman services can also be fully migrated to online platforms to ensure easy access for the students.

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