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THE LEGAL FRAMEWORK OF WHISTLEBLOWER PROTECTION IN MALAYSIA: CHALLENGES OF IMPLEMENTATION IN PUBLIC SERVICE

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ABSTRACT

The Government of Malaysia has established various initiatives and strategies to enhance integrity among public servants. Continuous efforts are made to ensure the highest quality of services provided by government officers and to increase public confidence in government services. One of the significant efforts introduced by the government is the Whistleblowers Protection Act 2010 (WPA 2010). The legislation, specifically designed to increase participation in combating corruption and other wrongdoing, offers legal protection to whistleblowers if specific requirements are met. This study examines the protection available to whistleblowers from government agencies through their relevant policies, as well as the challenges agencies face in providing that protection. This socio-legal research combines doctrinal legal and empirical methods. The doctrinal legal framework entailed examining and interpreting primary materials such as statutes, judgments, policies, and scholarly works. The empirical approach involved in-depth interviews to identify and assess the challenges faced by the relevant agencies. The findings indicate that there were several channels through which individuals could report misconduct among government servants, including the Public Complaints Management System (SISPAA), enforcement authorities such as the Police and the Malaysian Anti-Corruption Commission (MACC), and integrity units at the department or agency level. On the one hand, different channels provided aggrieved parties with more options, but on the other hand, overlapping issues might undermine the effectiveness of the measures. Other factors, such as over-classification of information, might also affect protection. Accordingly, several key provisions of the WPA 2010 require review to strengthen whistleblower protection and promote greater disclosure of misconduct in the public sector. Reform should also recognise second-tier whistleblowers, including lawyers and Non-Governmental Organisations (NGOs), while supporting the creation of an ombudsman-like independent mechanism to enhance public trust, improve reporting credibility, and reinforce accountability.

Keywords: Whistleblowing, misconduct, legal protection, enforcement agencies, legal reform.

INTRODUCTION

Government servants, including those who work in statutory bodies, are the backbone of a country. According to Section 3 of the Interpretation Act 1948 and 1967, a public officer is defined as a person who holds, acts in, and exercises the functions of public office. Public office refers to any office in the public services as mentioned in Article 132 (1) of the Malaysia Federal Constitution, and these include the following: the armed forces, the judicial and legal services, the general public service of the Federation, the police force, the joint federal-state public service, the public service of each state, and the education service. Those employed by the above-mentioned services are categorized as public servants in Malaysia. The judges, the Election Commission, and members of the administration of the Federation and the States are excluded from the definition under Article 132 (3) of the Constitution.

This has been confirmed in the case of *Tun Dr. Mahathir Mohamad and Ors v. Datuk Seri Mohd Najib Tun Hj Abdul Razak [2018],* whereby the court held that members of the administration of the Federation, such as Ministers, Deputy Ministers, Political Secretary, and Parliamentary Secretary, are not under the definition of a public servant according to the constitution. However, for criminal purposes, the Penal Code broadly defines a public servant. Any individual who acts on behalf of the government is a public servant, including judges, members of the armed forces, and employees of statutory bodies. Section 21 of the Penal Code also includes individuals performing public duties, whether appointed by the government or not. Since this study concerns criminal offences, the definition of public servant as set out in the Penal Code applies.

The conduct of public servants reflects the image of their government, as they are its agents in ensuring that policies are successfully executed and well understood by citizens. Accordingly, a government must have exemplary employees who can perform their tasks professionally, full of integrity and accountability (Institut Tadbiran Awam Negara, 2021). The positive image they project could increase public confidence in the government (Mohamed, 2022). On the contrary, any misconduct or corruption by government employees would be construed as evidence of the current government's inability to govern, which may affect public perceptions of the government and the ruling political party. Thus, any misconduct and wrongdoing among government employees must be avoided and prevented in the first place.

The government has introduced initiatives to improve service delivery and integrity among public officials, including the establishment of the Public Complaints Bureau (PCB, or in Malay, *Biro Pengaduan Awam*) to address public dissatisfactions and provide platforms for reporting misconduct occurring in statutory bodies and privatized agencies. Apart from physical presence at any of the PCB offices, public complaints have been lodged in various forms, such as by mail, email, online form, or by a telephone call to the Malaysia Government Call Centre (MyGCC), and via smartphone apps known as *Respons Rakyat* (RR 2.0). The total number of complaints received by the Public Complaints Bureau through various channels between 2020-2022 are as presented in Table 1.

Table 1

Total Number of Complaints Received by the Public Complaints Bureau through Various Channels between 2020-2022

Platform to Lodge Complaint	2020	2021	2022
Online form at SISPAA	6,729 (58.50%)	6,107 (58.41%)	11,236 (58.47%)
Apps: Respons Rakyat (RR 2.0)	4,174 (36.29%)	3,993 (38.19%)	7,411 (38.57%)
Email	160 (1.39%)	106 (1.01%)	148 (0.77%)
Mail/ Fax	190 (1.65%)	76 (0.73%)	112 (0.58%)
Stake holder	69 (0.60%)	62 (0.60%)	46 (0.24%)
Telephone	63 (0.55%)	40 (0.38%)	63 (0.33%)
Physical presence at the PCB office	98 (0.85%)	46 (0.44%)	107 (0.56%)
Other channels	19 (0.17%)	25 (0.24%)	92 (0.48%)
Total number of complaints received	11,502	10,455	19,215

From Table 1, it is worth noting that complaints lodged through digital channels accounted for more than half of the overall complaints. The percentages are consistent for the three years surveyed. On the other hand, only a small number of complaints were received from members of the public who came personally to the PCB offices.

As the PCB invites individuals to lodge reports of misconduct or complaints, it is important to note that not all offences will be accepted by the agency due to its limited authority and functions. If the alleged public officer is involved in criminal offences, it must be reported to the enforcement agencies with investigation and enforcement functions. The Legal Affairs Division, Prime Minister’s Department (BHEUU) has enumerated specific agencies that fall within the definition of enforcement agencies set out in Section 6 of the Whistleblower Protection Act (WPA) 2010. The agencies are as follows: the Royal Malaysia Police (RMP), the Malaysia Anti-Corruption Commission (MACC), the Immigration Department of Malaysia (IDM), the Road Transport Department of Malaysia (RTD), the Royal Malaysian Customs (RMC), the Companies Commission of Malaysia (CCM), and the Security Commission of Malaysia (SC). The public is welcome to lodge reports of misconduct occurring in public and private organizations. Under Section 7(1) of the WPA 2010, only individuals who report to the agencies will be afforded legal protection. The available protections will be further discussed in the findings and discussion section of this paper.

Apart from national-level agencies with authority to oversee misconduct in public service, it is essential to emphasize the significant role of Integrity Units operating within every government department. The idea of establishing the Integrity Unit originated on August 2008 (FAQ: Unit Integriti, 2024). A few officers from the MACC were assigned to the selected ministries and agencies to serve as the Head of Integrity Unit. Later, the MACC developed the Certified Integrity Officer program to plan, implement, and assess the effectiveness of integrity-related programs in both the private and public sectors. From

1st August 2013, all ministries and government agencies were obliged to establish their own Integrity Unit (Jabatan Perkhidmatan Awam, 2013).

The establishment of an Integrity Unit is crucial in promoting and upholding good practices within an organization. It could also prevent misconduct and corruption, thereby strengthening integrity. The Unit accepts and handles reports of any offences or misconduct from officers within the organization, stakeholders, and the public. In addition, the Integrity Unit is responsible for administering and implementing the agency's Whistleblower Policy. Employees can report misconduct to the Integrity Officer, who assesses the complaint's credibility and returns the complaint to the informant if it is found to be incomplete. If the report has started an investigation, the informants would be protected under the internal whistleblower policy. The investigation may involve an internal unit in the organization, or external agencies such as the RMP or the MACC. Then, appropriate action will be taken based on the findings, including corrective action or disciplinary measures against the wrongdoers.

LITERATURE REVIEW

There are several methods of rooting out misconduct, unethical or improper behavior. One method used is whistleblowing. Whistleblowing is crucial for exposing employee misconduct within organizations (Md Lazim et al., 2022). If no one is brave enough to come forward and lodge a report with the relevant authority, the wrongdoer will continue to commit the offence. While no corrective action will be taken, it will lead to disharmony among members within the organization (Mohd Ali @ Ramli et al., 2018). Thus, an effective policy is a crucial factor in supporting whistleblowers' participation and reflects good practice by government agencies in combating malpractice among public servants.

Misconduct in Public Office

Misconduct refers to actions or behaviors by individuals that are wrongful in nature, improper, or violate established rules, regulations, or ethical standards (Parida, 2020). According to Black's Law Dictionary 4th Ed., misconduct means:

> *"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour"*

The dictionary further defines Misconduct in Public Office (MIPO) as any unlawful behavior willfully committed by any public officer in the discharge of his duties. This broad definition is similar to that of the Malaysian WPA 2010. Section 2 of the Act defines improper conduct as:

> *"any conduct which, if proved, constitutes a disciplinary offence or a criminal offence."*

In the realm of Malaysian public service, distinguishing between misconduct and offences is crucial for understanding the appropriate legal and disciplinary measures. The two notions, although interconnected, are governed by distinct legal systems, evidentiary standards, and consequences. According to the Public Officers (Conduct and Discipline) Regulations 1993 [PU(A) 395/1993], misconduct denotes any improper, unethical, or unacceptable behavior by a public official that contravenes established disciplinary regulations and codes of conduct. While it may not constitute a criminal offense, it can impact the integrity, efficacy, or reputation of public service. On the other hand, an offence denotes a violation of criminal law, as delineated in statutes such as the Penal Code and the Malaysian Anti-Corruption Commission Act 2009. These are grave infractions adjudicated by criminal tribunals and may incur sanctions such as imprisonment, monetary fines, or both. Certain actions may qualify as both misconduct and a criminal offence. An officer who accepts bribes may encounter disciplinary measures (suspension or termination) and criminal prosecution (pursuant to Section 17 of the MACC Act). Disciplinary hearings facilitate prompt and administrative resolution to maintain service discipline. Criminal proceedings, albeit protracted, serve to penalize and deter corruption and egregious misconduct in public service.

Based on the definitions and explanations above, there are no specific offences under MIPO (Wan Hashim & Mohamed Hussain, 2021). Misconduct or improper conduct may take various forms, ranging from minor to major offences, including corruption, abuse of power, negligence, insubordination, fraud, harassment, and other actions that undermine the integrity and effectiveness of the public service (MACC Officer 1, 2024). There are some offences which are expressly stated in statutes. For example, Section 161 of the Penal Code emphasizes committing the offence of accepting or obtaining any gratification by a public servant. This offence is also mentioned in Section 16 of the MACC Act 2009.

In an Australian case, *R v. Brembridge (1783)*, Lord Mansfield had put forward a clear definition of official misconduct, which includes the following five principles:

a) Fraud in office - manipulating official documents, misrepresenting information, or engaging in deceitful practices to achieve personal or professional objectives;
b) Willful neglect of duty - failing to perform duties with due diligence, resulting in harm or loss to the government or the public;
c) Abuse of official power - using one's position or authority for personal or political advantage, such as favoritism, nepotism, or victimizing individuals;
d) Excess of official authority; and
e) Oppression or the unauthorized intentional infliction of injury upon a person - engaging in discriminatory behavior, bullying, or harassment towards colleagues or members of the public.

To summarize, in a judgment handed down by Pill LJ, Hughes and Aikens JJ in Attorney General’s Reference (No.3 2003) [2004] EWCA Crim 868, MIPO occurs when a public officer commits willful misconduct, a serious departure from the organization’s standards, that breaches the public trust without an acceptable justification.

Misconduct in Public Office: Scenario in Malaysia

In Malaysia, the number of reports of misconduct in public office received by the relevant agencies warrants appropriate attention. In 2021, the PCB received 10,455 reports from the public concerning the unsatisfactory service of government servants, excluding matters under the jurisdiction of the MACC, the Public Accounts Committee (PAC), and the Legal Aid Department (Public Complaint Bureau, 2022). It is important to note that the reports highlight the misconduct of public servants and cover a wide range of public service disappointments, including issues with public facilities and the quality of service provided by officers. There is an increase in the number of cases from the previous year. In 2020, the PCB recorded only 8,727 cases. The government should examine this unhealthy development seriously to increase public confidence in the public service.

The statistics recorded by the MACC over the past four years, from 2019 to 2022, demonstrate a slight decrease in the number of reports received from various sources (Bahagian Pendidikan Masyarakat SPRM, 2023).

Table 2

Total Number of Reports Received by the MACC

Year	2019	2020	2021	2022
No. of Reports	7,724	7,440	6,463	6,028

However, it could be argued that the decrease is attributed to the COVID-19 lockdowns (Liu et al., 2022). The government-imposed stay-at-home order disrupted people's daily routines. Consequently, it affects the number of reported crimes in the country (Nivette et al., 2021).

Based on the reports and information received, the MACC classifies them as either elements of corruption or non-corrupt elements. This classification is important to determine whether such offences fall within the jurisdiction of the MACC. If the reports contain corruption elements, the MACC will take further action, including opening Investigation Papers (IPs), preparing intelligence papers, and conducting other operations before referring them to the Public Prosecutor.

Who is a Whistleblower?

In general, a whistleblower is an informer who reveals misconduct or wrongdoing. However, in combating misconduct, a whistleblower is not merely a conduit of information. According to Near and Miceli (1985), a whistleblower in an organization is any member who discloses the illegal or immoral conduct of other members to the relevant officer who has the authority to take further action against the wrongdoer. A whistleblower discloses the occurrence of improper conduct by another person and identifies the alleged wrongdoings (Jubb, 1999). The main purpose of disclosing improper conduct or unethical behavior within an organization is to prevent it from recurring (Olesen, 2018).

The act of whistleblowing also involves accusations against another person in an organization. To distinguish the act of whistleblowing from mere information, Jubb (1999) has outlined six elements which are as follows: (i) the disclosure of improper conduct, (ii) the whistleblower agent, (iii) the subject matter of the disclosure or the act of the wrongdoings, (iv) a target organization to be held responsible, (v) the relevant agency to receive the disclosure, and (vi) the impact or outcome must enter to the knowledge of the public.

However, the WPA 2010 provides only a brief definition of a whistleblower as any person who discloses improper conduct to the enforcement agency. This formulation is comparatively narrow because it links protection primarily to disclosure made to an enforcement agency. In contrast, the EU Whistleblowing Directive adopts the broader concept of a reporting person, covering individuals who report or publicly disclose information on breaches acquired in a work-related context as stated in Directive 2019/1937. Likewise, in Section 16 of Australia’s Public Interest Disclosure Act 2013, there is a more structured approach in protecting disclosures made by public officials within the public sector. These comparisons however, suggest that unlike the broader and context-based models identified in the EU and Australia, the Malaysian approach remains more concise and channel-specific in defining who qualifies for protection.

The Role of the Whistleblower

To stop deviant acts in an organization, there is a need for participation from all, whether insiders or outsiders who have information about the wrongdoings, to blow the whistle (Carollo, Pulcher, & Guerchi, 2020). This important role played by whistleblowers aligns with the WPA 2010, whereby the aims of having the Act, as mentioned in its preamble are to:

> *"combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sector, …"*

To strengthen measures to expose misconduct and combat corruption within public office, participation from all, inside or outside the organization, is crucial. As Malaysia has signed the United Nations Convention Against Corruption (UNCAC) on 1st December 2003, the government must demonstrate its commitment to combating unethical behavior, especially corruption.

Article 13 of the UNCAC, which concerns public participation, requires state parties to adopt appropriate measures consistent with their available means and domestic legal principles. These measures should promote the active involvement of individuals and groups outside the public sector in the prevention of and fight against corruption, as well as in raising public awareness of its existence, causes, seriousness, and dangers. Article 37 of the UNCAC further calls upon state parties to take appropriate measures to encourage persons who have participated, or previously participated, in the commission of offences to assist the competent authorities by providing useful information for investigative and evidentiary purposes.

Whistleblowing Policy in a Public Organization

Government organizations typically have codes of conduct, ethics guidelines, and rules in place to prevent and address misconduct. These measures are designed to ensure accountability, transparency, and the responsible use of public resources. Violations of these standards can lead to disciplinary actions, ranging from warnings and suspensions to termination of employment. Legal consequences, including criminal charges, may also apply depending on the nature and severity of the misconduct.

To strengthen integrity and maintain public trust, an effective whistleblowing policy is a must. Therefore, proper planning is crucial in developing a whistleblower policy, taking into consideration the policy design, protection mechanisms, and its impact on whistleblowers and society. Near, Miceli, and Dworkin (2008) emphasized that this careful planning must be taken seriously because a clear whistleblowing policy in government agencies will encourage people to blow the whistle and, at the same time, protect whistleblowers from backlash or retaliation. A clear whistleblowing policy also serves as a guide that outlines reporting channels and can counter the fear of reprisals (Near & Miceli, 1996).

A clear whistleblowing policy is ineffective without enforcement by the relevant authorities. All policies must both exist and be implemented. Devine and Maassarani (2011) argued that a lack of enforcement by authorities will lead to negative feedback towards the policies and to the continuation of perceived fear of reprisals. Enforcement is meant to punish the wrongdoer and to provide legal protection for whistleblowers. Although the wrongdoers are punished accordingly, their proxies may retaliate against the whistleblower. As a result, potential whistleblowers may remain silent about any deviant act in the organization, since their careers, mental health, and family well-being all require strong safeguards to ensure that the policies can provide the necessary protection (Vandekerckhove, 2007). Hence, it is important to note that an effective whistleblowing policy depends on its clarity and its implementation and enforcement by the relevant authorities (Lewis, 2011).

The government of Malaysia developed the National Anti-Corruption Plan (NACP) 2019-2023, which was well received by the Malaysian Anti-Corruption Commission (MACC) and the National Audit Department of Malaysia. The NACP introduced initiatives across several priority areas to build a nation grounded in integrity, accountability, and transparency (GIACC, 2019). As mentioned in Strategy 2 of the NACP on strengthening the effectiveness of public service delivery, Strategic Objective 2.1.5 required all public sector agencies to develop their own Organization Anti-Corruption Plan (OACP) within the NACP period it is in force. Three agencies were identified to assist with this process, and they were namely, the MACC, the National Centre for Governance, Integrity and Anti-Corruption (GIACC), and the Malaysian Institute of Integrity (MII). As a result, many agencies developed their own whistleblower policies to encourage the disclosure of misconduct, including corruption within the organization, while ensuring whistleblowers' protection under the law. This reform agenda was subsequently continued under the National Anti-Corruption Strategy (NACS) 2024-2028, which expressly states that it is a continuation and enhancement of the NACP. It also incorporates new initiatives and reinforces institutional reforms in governance, integrity, and accountability across the public sector (Prime Minister's Department, 2024).

In light of the foregoing literature review, the research questions of this study are as follows:

> RQ1: How do the current legal framework and policies protect the whistleblower who discloses misconduct?
>
> RQ2: What are the challenges faced by individuals who are whistleblowers who exposes misconduct?

METHODOLOGY

This study adopts a socio-legal research methodology that combines the doctrinal legal method for interpreting legal texts, with the empirical method for understanding context. This study examines the interaction between law and society, as well as the social factors that affect the development and implementation of the law (Griffiths, 1986). The doctrinal legal method facilitates the authors in achieving the first research objective. The analysis entails examining the key legislation of the WPA 2010 and selected internal whistleblower policies at the agency level, along with records in the Hansard and reported case law, in order to interpret and contextualize the relevant laws. In addition to the primary sources, other references included commission reports, government circulars, newspaper reports, and scholarly works. The empirical component involved semi-structured interviews with eight purposively selected officers from the MACC, the Public Complaints Bureau, the BHEUU and selected statutory bodies, based on their direct involvement in handling complaints, integrity management, and whistleblower-related processes. The data collected was transcribed verbatim, analyzed thematically to the point of saturation, and triangulated with doctrinal analysis and relevant policy documents.

FINDINGS AND DISCUSSION

Legal Framework of Whistleblower Protection and its Drawbacks

In encouraging people to disclose misconduct or maladministration, especially in the public sector, Malaysia has enacted the WPA 2010. The WPA 2010 legal framework was designed to protect whistleblowers, the Act offers mechanisms to ensure the confidentiality of the whistleblower's identity and protect them from any retaliation. This requirement is inconsistent with the UNCAC provision on the protection of reporting persons. Article 33 of the UNCAC encourages all member states to take appropriate measures to protect whistleblowers from any detrimental actions. The same provision also states two requirements for whistleblowers before considering protection: the act of whistleblowing must be made to competent authorities, in good faith and on reasonable grounds.

Even though the UNCAC recommendation concerns corruption-related offences, the WPA 2010 has widened the scope to cover any report of improper conduct. Any act that falls under the scope of disciplinary or criminal offence is considered improper conduct under Section 2 of the WPA 2010. However, this scope is too broad because it encompasses any breach of laws, listing rules, and code of ethics (Meng & Fook, 2011). This was confirmed by the MACC Officer 1. The enforcement authorities will take action solely in cases that contravene the existing laws within their jurisdictions. Any conduct that violates internal policy will be subject to organizational disciplinary action (MACC Officer 1, 2024).

Those who blow the whistle should be given legal protection, as stated in Section 7 (1) of the WPA 2010. It states that:

> *"A whistleblower shall… be conferred with whistleblower protection under this Act as follows:*
> *(a) protection of confidential information*
> *(b) immunity from civil and criminal action; and*
> *(c) protection against detrimental action."*

Protection of Confidential Information

It is the foundation of the Act. Based on Section 2 of the WPA 2010, confidential information includes the whistleblower's personal information, such as identity, residential address, employment, and other information. It is compulsory for the authorities responsible for the whistleblower report to maintain the confidentiality of such personal information. The whistleblower feels secure to blow the whistle if this protection is guaranteed. It is a punishable offence under Section 8(4) of the WPA 2010 to disclose the whistleblower's confidential information.

Immunity from Civil and Criminal Action

The whistleblower is also protected by immunity from civil and criminal action, provided the disclosure is made in good faith. It is important to promote integrity and encourage honest reporting from the whistleblower. Interestingly, there was a case involving the MACC's chief, Tan Sri Azam Baki who filed a defamation suit against whistleblower K. Lalitha over two parts of an article which question his ownership of shares (Palani, 2023). However, the suit was dropped by Tan Sri Azam Baki a year later, without liberty to file afresh (Palani, 2024).

Protection against Detrimental Action

One reason individuals avoid whistleblowing is the fear of retaliation or punishment (Baltaci & Balci, 2017). Detrimental action or retaliation, such as discrimination, demotion, or harassment, or in the worst-case scenario, dismissal, could deter individuals from blowing the whistle.

To be granted protection under the Act, a whistleblower must have limited options to expose improper conduct. Section 6(1) of the WPA 2010 allows disclosure only to enforcement agencies. According to Section 2 of the Act, the enforcement agencies are those authorized to investigate and enforce. The BHEUU explains that the agencies that fall under this category are as follows: the MACC, Royal Malaysia Police (RMP), Road Transport Department (RTD), Security Commission of Malaysia (SSM), CCM, Immigration Department, and Royal Customs Malaysia (KDRM). In other words, if the recipients of the report are entities other than those stated in the Act, for example, Non-Governmental Organizations (NGOs) or the media, the whistleblower will not receive legal protection. Although the disclosure is made through internal reporting channels, whistleblowers are not entitled to legal protection under the Act.

The situation has been illustrated in the case of *Dr. Milton Lum Siew Wah v. Majlis Perubatan Malaysia (2020)*. Dr. Milton was a Consultant Obstetrician and Gynecologist at a private hospital. As he was aware of professional misconduct by a medical practitioner at the hospital that violated the Medical Regulations 1974, he reported it to the Malaysian Medical Council, the statutory body that governs the professional conduct of medical practitioners in Malaysia. As a result, his contract was terminated. He brought the case to court, claiming protection against a detrimental action, and succeeded. On appeal, the Court of Appeal overturned the High Court's decision because the disclosure was not made to the appropriate enforcement agencies as required by Section 6(1) of the WPA 2010. The Malaysian Medical Council is just a disciplinary body, not considered an enforcement agency under Section 2 of the Act. Therefore, any disclosure made to the body is not protected by the Act.

The internal whistleblowing policy also does not allow informants to share any information with other parties, including top management in the organization. The only unit responsible for handling the reports is the Integrity Unit. If the informants send copies of the reports to top management, protection will not be given. This has been demonstrated in an appeal case, *Rokiah bt Mohd Noor v. Menteri Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan Malaysia [2016]*. Rokiah was the Deputy Chief Executive Officer (Operations) of the Companies Commission Malaysia (CCM). Through a letter, she addressed her concern about the misconduct involving the top management of the CCM. The letter was sent to the CCM chairman and the six other parties, namely the Prime Minister, the Deputy Prime Minister, the Chief Secretary to the Government, the Minister of Domestic Trade, Cooperatives and Consumerism, the Chief Commissioner of the MACC, and the Director of the MACC's investigation department. Her contract was terminated after the CCM Disciplinary Committee found her in breach of discipline. Then, she filed an application for judicial review, claiming that she should be protected against detrimental actions under Section 10 of the WPA 2010. The High Court dismissed her application. When she appealed to the Court of Appeal, the court held that she was not entitled to protection because the disclosure was made to parties other than enforcement agencies, as required by the Act. This case indicates that even when information is shared with relevant parties, the informant will not be entitled to legal protection.

Section 6(1) of the WPA 2010 further states that the disclosure made by the whistleblower must not contradict any written law of the country. Some laws prevent individuals from sharing information and emphasize the importance of protecting its secrecy. For instance, Section 8(1) of the Official Secrets Act 1972 (OSA). It is an offence under the Act for an unauthorized person who possesses an official secret to communicate it to others. This has been highlighted in the case of Mohd Rafizi Ramli, the Vice President of Parti Keadilan Rakyat (PKR). He was charged under Section 8(1) of the OSA 1972 for unauthorized possession of the 1MDB Audit Report and for revealing it during a press conference at Parliament. He was found guilty of that offence, and the Sessions Court sentenced him to 18 months' jail (Anand, 2016).

Whistleblower's Reporting Channel

The PCB is the appointed agency responsible for coordinating public complaints lodged through the Public Complaint Management System (SISPAA). All complaints received from various channels, such as email, fax, or in person at any office of the PCB, will be registered under SISPAA, which includes important information such as the complainant's details, the nature of the complaint, supporting documents, and the relevant agencies involved. It assesses the jurisdiction of the complaints, ensuring they do not fall under the Public Accounts Committee, the Malaysian Anti-Corruption Commission, or the Legal Aid Department. The PCB also checks the completeness of the information provided by the complainants, requiring cooperation and the provision of necessary information. Complaints are prioritized based on their impact on the public. After assessment, the PCB assigns the case to the relevant department or agency for further investigation. The department or agency will then provide a complete report with findings and proposed solutions. The PCB ensures transparency, compliance with government policies, and comprehensive proposals for corrective actions. If the report is inadequate, complainants can request further review or bring the matter to higher authorities. The case is concluded when the complainants are satisfied with the suggested corrective measures. The PCB monitors the implementation of these measures to avoid the recurrence of similar complaints.

Based on the reports received, the SISPAA is a popular platform for individuals to report misconduct or dissatisfaction with the performance of a government employee. However, whistleblowers using this platform are not protected under the WPA 2010, as the PCB lacks the necessary investigative and enforcement powers. This indicates that the law does not guarantee the confidentiality of their information.

As stated in the Whistleblower Protection Act of 2010, a whistleblower has an additional option to report a criminal offense committed by a public servant to the law enforcement agencies responsible for investigating the offense. As stated in Section 6(1) of the Act, a whistleblower may report improper conduct to any enforcement agency if they reasonably believe that someone has engaged in, is engaging in, or is planning to engage in such conduct. The Act also restricts the enforcement agencies described in Section 2 of the same Act, such as the MACC, RMC (Royal Malaysia Police), RTD (Road Transport Department), Customs Department, and Immigration Department.

Implemental Challenges

When introduced, the WPA 2010 was seen as a major governmental initiative to combat corruption in this country. However, after 15 years of implementation, it has faced feedback and criticism regarding certain provisions of the Act, particularly its limitations. If these limitations persist, they may hinder disclosure among stakeholders, such as complainants and whistleblowers.

It is essential to highlight that public involvement in disclosing misconduct among government officials should be a primary concern. Based on a study in Malaysia, 98% of respondents agreed that they should lodge complaints when dissatisfied with the performance of public officers in the discharge of their duties. However, only 32% of respondents had exercised their right to lodge their complaints with the relevant authorities (Biro Pengaduan Awam, 2023). Among the reasons stated are:

a) The report is meaningless and will not change anything
b) No serious action will be taken
c) Do not know how to lodge the report/complaint
d) The process is complicated and not worth it
e) Wasting time

Disclosure to Third Party

To be protected by the Act, the disclosure should be made to enforcement authorities such as the Royal Malaysia Police, the Malaysian Anti-Corruption Commission, and others. This is strictly mentioned in Section 6(1) of the WPA 2010. If the recipients of the report are entities other than those specified in the Act, such as NGOs or the media, the whistleblower will not receive legal protection. Even though the disclosure is made through internal reporting channels, whistleblowers are not entitled to legal protection under the Act. This limitation should be reviewed because this section limits disclosure to the enforcement authorities.

The empirical findings reinforce this concern. Respondents from the MACC explained that protection under the current framework is highly dependent on the route of first disclosure. Where a complainant first reveals the matter to a superior officer, colleague, or unauthorized person before reporting the matter to the relevant enforcement agency, this may affect eligibility for protection under the WPA 2010 (INT2a, INT2b, & INT2c, personal communication, 2024). Respondents also noted that many potential whistleblowers remain uncertain about the correct reporting channel, causing some to approach internal officers in good faith before making a formal report. Similarly, the BHEUU stated that complaints submitted directly to departmental Integrity Units may only receive protection under internal policies unless later referred through the statutory mechanism (INT1, personal communication, 2024). These findings suggest that the present framework places significant emphasis on procedural sequence rather than the substance of the disclosure.

Another issue concerns public trust in enforcement agencies. The Global Barometer Index 2017 reported public distrust arising from corruption within certain enforcement institutions, particularly the Royal Malaysia Police (GIACC, 2019). This may discourage members of the public from reporting misconduct directly to agencies that are themselves perceived as lacking integrity. In such circumstances, the government may face difficulties in encouraging public participation in whistleblowing.

In Malaysia, NGOs such as Rasuah Busters and Malaysia Corruption Watch have actively supported anti-corruption efforts by assisting authorities and encouraging public reporting. The MACC has also engaged with civil society as part of its public awareness campaigns under Section 7(g) of the MACC Act 2009. Such cooperation should be expanded beyond educational campaigns. Individuals who first consult trusted NGOs and share relevant information in good faith before approaching enforcement agencies should be considered for protection, subject to safeguards against abuse.

The protection should also be extended to those who consult their lawyers. The current practice under Section 8(1) of the WPA 2010 prohibits the disclosure of information to other entities after it has been disclosed to the enforcement authorities (Fikri, 2021). This situation may disappoint those who are willing to blow the whistle. Instead of encouraging people to step forward as whistleblowers, this could deter others from doing so. Even though whistleblowers are not the party that committed the offence, legal advice from their lawyers may assist them with their next steps. It is recommended that the right to consult lawyers not be limited to the arrestee, but also apply to whistleblowers seeking legal protection under the WPA 2010. Enforcement agencies may impose strict procedures to enable whistleblowers to exercise this right. The arrestee in a criminal case may exercise this right according to the police, as stated by the Judge in the case of *Ramli bin Salleh v. Inspector Yahya bin Hashim [1973]*. Thus, the WPA 2010 should consider this to encourage more public participation and whistleblowing.

Public Disclosure

By providing legal protection, the WPA 2010 aims to encourage individuals to come forward with information related to wrongdoing, corruption, or misconduct. However, a significant limitation of the Act is that protection is largely confined to disclosures made to recognized enforcement agencies such as the MACC, Royal Malaysia Police, and other designated authorities. This means that a whistleblower who publicly discloses misconduct through the media, NGOs, advocacy groups, or social media may not receive protection under the current framework.

This narrow approach may reduce the effectiveness of the Act in promoting accountability and transparency. Individuals who lack confidence in official channels may remain silent out of fear of retaliation or inaction. Others may feel morally compelled to disclose information publicly when they believe that reporting through formal mechanisms is unlikely to produce meaningful action. In such cases, the absence of legal protection may discourage the exposure of serious wrongdoing.

The empirical findings illustrate this tension. Respondents from the MACC acknowledged that journalists and media practitioners have on several occasions provided useful preliminary information concerning corruption, procurement irregularities and abuse of power (INT2a, INT2b, & INT2c, personal communication, 2024). In some instances, such information had assisted investigators by highlighting emerging issues or supplying documentary leads. However, respondents also cautioned that premature public disclosure may compromise investigations. Once allegations become public, suspects may destroy evidence, conceal assets, influence witnesses or abscond before enforcement action is taken. Respondents further noted that speculative or inaccurate public reporting may unfairly damage reputations before facts are properly verified. These findings suggest that public disclosure may both assist and undermine enforcement objectives, depending on the timing and manner of the disclosure.

Whistleblowers who decide to make their allegations public may also face serious personal consequences, including dismissal, legal action, blacklisting, or even threats to personal safety (Rothschlid & Miethe, 1999). As such, the absence of protection for public disclosures may deter genuine informants from exposing matters of significant public concern.

Considering an expanded definition of protected disclosures could strengthen whistleblower protection in Malaysia. Individuals who disclose information to the media, civil society organizations, or other independent bodies should be considered for protection in limited circumstances, particularly where there is a reasonable belief that official channels will not respond effectively or impartially. The Act should therefore, consider incorporating a public-interest disclosure clause.

The EU Whistleblower Protection Directive provides a useful comparative model by recognizing public disclosure where: (a) the matter was previously reported internally or externally, but no appropriate action was taken; (b) there are reasonable grounds to believe that the breach poses an imminent danger to the public interest; or (c) there is a risk of retaliation or a low prospect that the breach will be effectively addressed.

Accordingly, the WPA 2010 should be reviewed to recognize carefully regulated public disclosures in appropriate cases. Safeguards such as good faith, reasonable belief, and proportional disclosure may prevent abuse while promoting greater transparency and accountability.

Lack of Trust and Confidentiality

Workers must trust that the system is impartial, fair, and able to secure their identities for a whistleblower policy to be effective. They may be reluctant to report misconduct if they believe their concerns will not be taken seriously or are handled poorly. Employees are also less inclined to come forward if they fear their names will be revealed and that this could result in retaliation or other unfavorable outcomes.

Lack of faith in the system keeps employees from speaking up (Kenny, 2019). Employees are deterred from using the whistleblower mechanism when they think their organization will disregard their concerns or even discipline them for reporting the wrongdoing. There were cases in which employees experienced demotions and wrongful dismissal after disclosing misconduct, illegal activities, or unethical behavior within their organization (Dworkin & Baucus, 1998). Furthermore, in organizations where management or leadership has a track record of rejecting concerns or retaliating against whistleblowers, this dread is more acute.

The empirical findings strongly support these concerns. Respondents from the MACC observed that many complainants prefer to report directly to the MACC because they have greater confidence in its complaint-handling procedures compared with certain internal departmental channels (INT2a, INT2b, & INT2c, personal communication, 2024). Respondents further noted that trust in some internal mechanisms remains low where complaints submitted to Integrity Units may be shared with senior management, thereby increasing fears that the identity of the whistleblower will become known. Similarly, respondents from a statutory body explained that complaints are sometimes directed to multiple units, including the Integrity Unit, Disciplinary Unit, and Internal Audit, which may create uncertainty regarding confidentiality and responsibility for action (INT4 & INT5, personal communication, 2024). These findings indicate that trust is closely linked to clarity of process, independence of the receiving body, and confidence that identities will be protected.

Confidentiality is a crucial aspect of encouraging whistleblowing. Any actual or perceived loss of confidentiality can undermine systemic confidence, regardless of an organization’s claims to protect whistleblowers. An employee may experience harassment at work, lose their job, or have their professional reputation harmed if they report misconduct and then learn that their identity has been compromised (Graaf, 2010). When other workers observe such failures to safeguard confidentiality, they might conclude that it is safer to keep quiet than risk disclosing unethical activity (Miceli & Near, 1985).

It is challenging to establish and keep up a reliable mechanism for reporting misconduct, particularly in settings where power struggles, office politics, and interpersonal ties affect decision-making. Senior staff members or powerful individuals may be able to censor reports or take retaliatory action against whistleblowers in some organizations. As a result, it is increasingly difficult to ensure that whistleblower procedures are genuinely unbiased, safe, and efficient.

To boost whistleblower confidence, organizations should restrict access to whistleblower identities and use secure reporting channels to ensure confidentiality. This will reduce concerns about reprisals and increase the likelihood that whistleblowers will report misconduct (Mirjanić & Čošabić, 2017). Moreover, the EU Whistleblower Protection Directive enforces confidentiality protocols, providing whistleblowers with professional and legal protection against reprisals, such as blacklisting, demotion, and termination (Dworkin & Baucus, 1998). The organizations should also implement robust legal and professional precautions, including employment protections, anti-retaliation rules, and legal support programs, to reduce corruption and increase ethical disclosures (Zuckerman, 2017). Next, organizations can foster a culture of integrity by creating a safe environment for employees to report misconduct. This fosters a moral and open workplace, reducing fraud rates and enhancing corporate reputation. This can be achieved through transparent discourse, incentivizing ethical conduct, and strong whistleblower mechanisms (Belaja, Mohamed, & Rozzani, 2019). Beyond confidentiality and protection measures, the Malaysian framework would also benefit from an independent review mechanism to oversee how whistleblowing complaints are handled in public institutions. A two-tier review structure may be considered, in which an Ombudsman-like body independently reviews the management of whistleblowing disclosures and related disputes, while a separate oversight body examines the conduct and effectiveness of that Ombudsman office itself (Omoola et al., 2023).

Fear of Retaliation and Lack of Protection

The fear of reprisals is a major barrier to successful whistleblowing in Malaysia. Concerns over potential repercussions can make employees hesitant to report misconduct, corruption, or abuse of authority. These anxieties are especially prevalent in settings where strong institutions or government agencies operate with secrecy or authority that suppresses criticism (Miceli et al., 2008). Although the Act forbids employers and organizations from taking harmful actions against whistleblowers, such as firing, demoting, or harassing them, this is insufficient to persuade them. Whistleblowers continue to face reprisals, and enforcement is still lax.

The empirical findings strongly reinforce these concerns. Respondents from the MACC reported that many potential whistleblowers remain reluctant to disclose misconduct due to fears of transfer, workplace marginalization, stalled promotion opportunities, or disciplinary targeting after making a report (INT2a, INT2b, & INT2c, personal communication, 2024). Respondents further noted that retaliatory action is often disguised as ordinary administrative decisions, making it difficult to establish a clear causal link between the disclosure and the adverse treatment. In one example shared during the interviews, an officer who reported misconduct was later transferred following internal pressure and strained workplace relationships. Respondents from MARA (*Majlis Amanah Rakyat* or the Council of Trust for the People) similarly acknowledged that requests had arisen to relocate staff who exposed management wrongdoing, although such requests would be subject to internal scrutiny (INT5, personal communication, 2024). These findings suggest that retaliation may occur through indirect organizational measures rather than overt punishment.

Loss of employment remains one of the most serious consequences feared by whistleblowers. When allegations involve senior officials or entrenched interests, the complainant may be viewed as disloyal or disruptive. In such circumstances, employers may seek to isolate, remove, or discredit the whistleblower, thereby creating a chilling effect on others who may possess similar relevant information.

Furthermore, whistleblowers often face demotion and career stagnation due to retaliation, which can result in refusal of promotions, ‘rewarded’ with inferior positions, or undesirable work assignments. The whistleblowers' well-being and quality of life may be negatively affected by chronic uncertainty and anxiety due to concerns about personal safety, job security, and career prospects (Mescher et al., 2017). Even when whistleblowers are legally protected, they still do not trust the system because they believe that enforcement measures will not be enough to ensure their safety and job security (Devine & Maassarani, 2011).

CONCLUSION

Based on the foregoing discussions, it has become clear the importance of securing public support and participation in disclosing misconduct, especially within government agencies. The introduction of the WPA 2010 is one of the government's efforts to build public confidence in whistleblowers by outlining a few legal protections for them. Section 7 of the WPA 2010 states that the whistleblower's identity will be kept confidential, that whistleblowers will be protected from any civil, criminal, or disciplinary actions arising from their disclosures, and that whistleblowers will be protected from any detrimental action arising from the disclosures. These protections may attract more individuals to reach out to the enforcement agencies and encourage them to report unlawful or unethical conduct in their midst.

The implementation of whistleblowing policies within government agencies appears straightforward in principle. However, in reality, several challenges must be addressed, which could hinder their effectiveness and render the objective of preventing misconduct unattainable. A whistleblower is not allowed to disclose illegal activities or misconduct to parties that lack investigation and enforcement functions. Public disclosure, such as through the media, will also disqualify a whistleblower from receiving legal protection. An unethical employer who reveals the whistleblower’s identity to others could undermine trust in the organization concerned. Even though the WPA 2010 and the internal policies of government agencies protect whistleblowers from detrimental action, the fear of retaliation remains a major concern among employees, leading them to hesitate to disclose misconduct in their organization.

It has already been 15 years since the Act's enactment, there is therefore, a need to review certain provisions of the WPA 2010 to ensure that the Act remains relevant in protecting whistleblowers. The current practice only allows disclosure to enforcement agencies, as seen in the cases of *Rokiah bt Mohd Noor v. Menteri Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan Malaysia*, and *Mohd Rafizi bin Ramli*. The government should consider including the second tier of people who are connected to whistleblowers, such as lawyers, NGOs, or members of top management, in its protection scheme. In addition, the government should also recognize public disclosure through the media, with strict requirements and implementation as outlined in the EU Whistleblower Protection Directive. Furthermore, robust protections should be in place to ensure the confidentiality of whistleblowers’ identities and to prevent detrimental action against them. This can encourage all and sundry to disclose misconduct, illegal activities, or unethical conduct in their organizations.

This study contributes to the growing literature on whistleblower protection by combining doctrinal legal analysis with empirical evidence from key Malaysian institutions. The findings demonstrate that the practical success of whistleblower protection is shaped as much by institutional trust, governance culture, and administrative practice as by statutory design. Future studies could examine the effectiveness of the legal protections provided by the WPA 2010 and internal policies within government agencies. These studies could identify the role of laws and policies in combating misconduct by examining the number of reports and misconduct statistics before and after the introduction of the WPA 2010 and internal policies.

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