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It's Not Enough to Speak, But to Speak True: Revisiting the Whistleblower Protection Law in Malaysia

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ABSTRACT

This research analyses the gaps and weaknesses in the existing legislative framework for whistleblower protection in Malaysia. The study found two main issues in the Malaysian Whistleblower Protection Act 2010 dealing with the disclosure of wrongdoings. They are the limited disclosure channel and an act of disclosure of information is an offence under other legislation. The protection for whistleblowers becomes vulnerable with the current restraints. Whistleblowing has significantly become one of the critical requirements in society as a medium to curb corruption. By analysing the weaknesses of this Act, the research contributes to the body of knowledge and plays a critical role in proposing to the policymakers for advocating some enhancement in the future for the sake of a whistleblower's safety. The research adopts doctrinal and qualitative methodology. A content analysis through analytical legal approach is employed by examining the Malaysian existing law. A brief reference analysis is conducted on the United Kingdom Public Interest Disclosure Act 2010 and the Employment Act 1996. Thus, salient improvements of law provisions are recommended to better regulate the existing laws in Malaysia. The findings demonstrate the need for practical strength of amendments to protect the whistleblower due to unpredictable consequences. To date, potential whistleblowers are discouraged from disclosing information if the system is incapable of protecting them from fearing a backlash against them. The proposals suggested changes to the legislation to provide a good practice of guidance in handling concerns of wrongdoings.

Contribution/Originality: This study contributes to the existing literature in examining the weaknesses of the WPA 2010 and proposes legislative amendments to enhance the protection of whistleblowers. The main improvement of widening the disclosure channel is strongly suggested to the relevant authority in the hope to change the whistleblower's landscape dealing with wrongdoings.

1. Introduction

Shakespeare words "it's not enough to speak, but to speak true" highlights the importance of communicating true facts (Pollard, 1909) in line with the spirit of whistleblower law. Historically, the act of speaking truth in the context of "whistleblower" was the practice of police officers, who would blow their whistles when they noticed the commission of crimes (Loganathan, 2019). In the modern dimension, a whistleblower refers to as an individual who could be a former or present member of a company, organisation or any government agencies who discloses information about wrongdoings and illegalities. Among the crimes that are usually reported include acts of misconduct, fraud and corruption.

Hidden from the public eye, an act of corruption or an illegal wrongdoing requires a "special mentioned" by insiders i.e., whistleblowers revealing the information to the authority. In Malaysia, a report on the annual statistics of arrests made by the Malaysian Anti-Corruption Commission (MACC) in 2021 found that there were 851 individuals arrested and convicted for corruptions and wrongdoings (MACC, 2022). The number of arrestees has decreased by 14.7 per cent in a year, from 998 in 2020 to 851 in 2021. In 2022, the statistic has slightly increased until the month of October, it was 876 arrestees and 316 were amongst the public servants. The civil servants amounted to 36% of the arrest (MACC, 2022). There are also unreported cases left unknown to the authorities. The report shows a significant number of persons in Malaysia are involved in wrongdoing activities, whether they are in the private or public sector.

The existence of corruption practices reported among Malaysians may relate to the success of the contributory factor of whistleblowing. Corruption is normally done in covert access and difficult to curb if there is no crucial evidence or any reliable insider information. Whistleblowing comes into the picture as part of the process to assist the enforcement officers in charging an individual for criminal offences, especially bribery. In many instances, the accomplishment of the Malaysian enforcement agencies including the Royal Malaysian Police, or the MACC would depend on the information specifically given by those who are willing to come forward and inform the enforcement agencies of any corrupt acts or organised crimes being performed (Leong, 2017). In 2019, based on the Whistleblower Protection Act 2010 Implementation Report, there were 5,053 cases of complaints received but only 13 out of 5,053 cases involved successfully categorised under whistleblowing (BHEUU). This data highlighted a serious question on the application and implementation of whistleblowing law.

The act of whistleblowing is not a straightforward reporting process, it requires courage and strategic initiative to execute an effective action. Whistleblowing provides for the identification of wrongdoings and allows justice to be exacted upon guilty corporations or organisations that otherwise may remain unexposed. On a larger scale, those wrongdoings costs taxpayers an inordinate amount of money every year and eventually causing the national economy to be unstable. By promoting the whistleblowing culture, the move may crack down on the problematic issue to reduce this unnecessary loss of capital.

There are obviously significant risks in being a whistleblower. He or she may be fired from the company or alienated from fellow colleagues. Sadly, despite best efforts to combat these mistreatments, the risks still exist. Potential mistreatments are largely influenced by the environmental factor, whereby the surrounding people may perceive the act of whistleblowing negatively. Whilst whistleblowers are considered by some to be

courageous, others see them as 'snitches' (Sheller, 2014) that may jeopardize their organisation and source of income. This can result in whistleblowers being victimised by their colleagues and suffering unfair treatment. The majority of the whistleblowers left their job in the year following their complaint, be it voluntarily or forced (Webb, 2019).

In order to curb the wrongdoings of corruption, bribes, frauds and many others, inevitably, the enforcement agencies need the information given by the whistleblower. In return, they must be protected from any harm. Whistleblowers, however, bear the risk of facing stiff reprisal and retaliation from those who are accused or alleged of wrongdoings. Whistleblowers may face legal actions, criminal charges, social stigmas, and termination from any position, office, or job.

The shield for a whistleblower in Malaysia is currently regulated under the Whistleblower Protection Act 2010 (hereinafter 'the WPA 2010'). With the WPA 2010, the public worry less about the consequences that may influence them in blowing the whistle on any wrongdoings, either in public or private sector. However, the WPA 2010 becomes vulnerable as its adequacy in protecting whistleblowers was disputed in some ways. Consequently, the person who chose to whistle blow risking few factors of one's life including the exposure of personal details not entitled to immunity from any civil and criminal actions, and potential harmful actions inflicted upon the whistleblower which may cause severe injuries, losses or damages, harassments or interference with his or her lawful employment or livelihood. These problems may reflect big losses and will provide bad examples to any person who has the intention to make a disclosure. Finally, wrongdoings or improper conduct will become rampant and uncontrolled. This research revisits the WPA 2010 after more than ten years of its implementation and analyse the issues and challenges for the protection of whistleblowers.

2. Literature Review

At the international arena, whistleblowing is a global phenomenon and happening in many jurisdictions. Whistleblowing became focus of international consultations, particularly with the United Nations, the Organisation for Economic Cooperation and Development, the G-20, the International Chamber of Commerce, the Council of Europe, the Organisation for Security and Cooperation in Europe and the International Labour Organisation (Thusing & Forst, 2016). Numerous studies regarding whistleblowers have been conducted in the past decade (Near & Miceli, 1985), Morrow and McElroy (1987), Padmanabhan, 2011). Those studies examined the importance of whistleblowers in enhancing the environmental behaviour in the community to a better standard, free from the impairment of corruption and provide beneficial information to develop organisational efficacy and public safety (Near & Miceli, 1985). With the rise of fraud cases in various sectors in Malaysia, this research is deemed significant to emphasise on the vital functions of whistleblowing as an internal control mechanism of an organisation (Ghani et al., 2011) and to provide legal insights in assisting the relevant authorities in reducing the wrongdoings.

Meng and Fook (2011) emphasised whistleblowing as a comprehensive system of detection and prevention of fraud and other kinds of wrongdoing and proposed a compulsory adoption to ensure the continuous support of investors in a country. To eradicate corruption, the right to freedom of expression and the right to know should be accorded, as well as offering protection to whistleblowers (meaning thereby disclosure of

a conduct adverse to the public interests) who help to highlight malpractices of the administration (Padmanabhan, 2011).

2.1. The Concept of whistleblowing

The concept of whistleblowing as a process is explained by Near and Miceli (1985) engaging four components, they are the whistleblower, the whistleblowing act, the complaint receiver and the organisation.

Table 1 shows the four components in a process of whistleblowing. By right, a whistleblower is the person who discloses the illegitimacy of organisation activities or the members in the organisation that may harm the third parties. The person reporting misconduct or illegalities to an entity holding the power is presumed to take counteractive actions. The misconduct generally refers to fraud, violation of law, corruption, or any other wrongdoings.

Table 1: Process of whistleblowing

No	Components	Process
1	Whistleblower	A current employee or a former member of an organization who is conscious of the wrongdoing but requires authority to change the situation.
2	The whistleblowing act	The act of revealing a corrupt practice or wrongdoing to individuals or entities that have the authority or power to change the situation.
3	The complaint receiver	An external whistleblowing who is a third party or other than an internal whistleblowing who is additional to the immediate supervisor.
4	The organization	The targeted organization for whistleblowing either a public or a private entity and may be needed to react to the disclosure of illegal practice.

Source Near and Miceli (1985)

2.2. Type of whistleblowing

Whistleblowers can be from at any level within an organisation and either internal or external whistleblowing (Chartered Institute of Internal Auditors, 2021). External whistleblowers are usually associated with reports to people or entities not associated with the organisation. External whistleblowing typically involves extreme situations, with the potential for consequences that are more severe. They might choose to report misconduct to lawyers, media, regulators, or law enforcement agencies. It these instances, the impact is related to the citizen's rights, privileges and safety, increments in taxes and reduction in services, as well as jeopardising the greater regulation and support for codes of ethics. Conversely, the internal whistleblowing can be conducted through internal process established by the corporations or organisations (Chartered Institute of Internal Auditors, 2021). Ideally, the process allows a firm to correct a previous wrongdoing and avoid the associated consequences. However, the effectiveness of the internal whistleblowing in preventing the misconducts in the organisation involved remains questionable. Nobody can guarantee the action taken will resolve the issue raised up by the whistleblower despite knowing the good impact it has to the organisation's development and image. Encouraging internal whistleblowing can increase safety and well-being within an organisation, support codes of ethics, reduce mismanagement,

improve morale, maintain good will and circumvent claims for damages and/or legal regulations.

2.3. Needs for whistleblowing

Motives for whistleblowing vary, but they are usually underpinned by the common acknowledgement that not blowing the whistle on perceived wrongdoings is a dereliction of duty. It is important to note here that the primary aims of whistleblowing policy must be to uncover unlawful conduct, establishing whether behaviour causes a direct threat to the public interest, or violation of safety and security. The whistleblowing is expected to supplement preventive measures against corrupt practices, promotes openness, fosters transparency, supports risk management schemes, and assists in safeguarding the reputation of a corporation or an institution (Chartered Institute of Internal Auditors, 2021). Mostly, in any whistleblowing process, the procedure may expose a company's illegal actions to an appropriate authority or agency. Inevitably, a person may require considerable courage to report the wrongdoing as he/she may be victimised for disclosing the wrongdoing. Indeed, there are many legislations all over the world that stand to protect the whistleblower in a proper way.

The inception and framework of the WPA 2010 can be traced back to the United Nations Convention Against Corruption which was ratified by Malaysia in September 2008. However, the success of the WPA 2010 is still in question after reviewing the discussions among the studies. The main problem could possibly lie in the perception of whistleblowing where it can be regarded as an unacceptable behaviour (Ghani et al., 2011). A safe culture and environment ought to be promoted for individuals who volunteered to come forward with valid complaints (Sachdeva, 2014). Despite this, a good mechanism of protection needs to be asserted carefully in details. If not, the fear of being threatened mentally and physically may also be one of the factors which could influence a person before blowing the whistle (Nagpal, 2013).

The WPA 2010 Implementation Report showed that the number of complaints received were significant in 2018 and 2019 (BHEUU, 2019). In 2018, there were 3,866 cases recorded but only 18 whistleblowers stepped forward to assist in the investigation. Whilst in 2019, the number of complaints received increased to 5,053 cases with only 13 whistleblowers. Particularly, it is a sign for the government to ponder the reasoning behind the scenarios that occurred. In addition, there are possibilities that a whistleblower disclosure of any information related to classified documents on behalf of government, by all level, no protection worthy to them to apply as a whistleblower. Furthermore, allowing one to only whistle blow to the enforcement agencies is rather stringent. This is because there may be a situation in which the improper act or conduct is performed with the enforcement agencies being the accomplice, directly or indirectly. This is a vulnerable spot to the whistleblower that exposes him or her to an unsafe situation. Inadequacy of the protection requirements also can be argued especially when people disclose any documents or information with high level secrecy. It is disputed that the WPA 2010 is able to give protection to those who disclose any information that is prohibited by any of written law. Advocates highlighted the need for amendments of the legislation to further enhance its position in curbing and reducing the problem of increasing corruption cases.

Hence, it is crucial to analyse the issues and challenges found in the WPA 2010 in order to improve whistleblower protections. Subsequently, the identifiable gaps from the

observation should be properly sorted out to create a sense of confidence and trustworthiness among the people to blow the whistle.

3. Methodology

This study adopts the doctrinal research approach and qualitative method. It is applied by evaluating the laws in Malaysia and briefly in the United Kingdom to establish objective and credible results. On the other hand, analysing domestic laws which have been regulated in one or more countries in similar legal scope is becoming almost compulsory in doctrinal legal research (Hoecke, 2004). The qualitative method is aims to improve the substantial part of the law by means of which could result in achieving the broader goal of law and its purpose is to build new principles, add some new knowledge and provide foundation for study on other various sociolegal issues (Kharel, 2018).

The study methodology loosely adopted Hoecke's framework of similar legal scope examining domestic laws which has been regulated in one or more countries in doctrinal legal research (Hoecke, 2004). The stages of the doctrinal and content analysis approach are illustrated in Diagram 1.

Diagram 1: doctrinal and content analysis approach

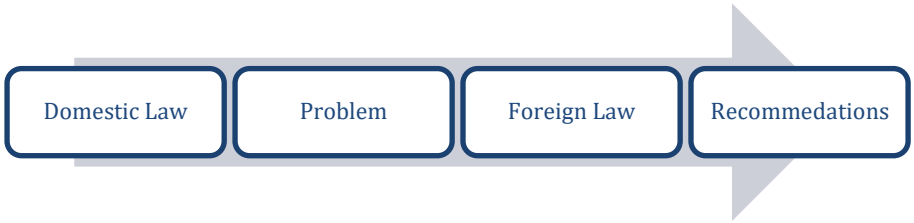

Diagram 1 shows the process of the research. Firstly, a content analysis of the domestic law is conducted using primary sources. The Malaysian law i.e. the Whistleblower Protection Act 2010 provisions are examined. Secondly, the analysis identifies the problems and lacuna existed. Thirdly, the UK laws are analysed on the relevant areas. The UK statutes are the Public Interest Disclosure Act 1998 (the PIDA 1998) and Employment Rights Act 1996 (the ERA 1996). Fourthly, based on the analysis result, the findings lead towards the recommendations for further action.

4. Result

4.1. Key elements

The enactment of the WPA 2010 is part of the efforts taken by Malaysia to fulfil its obligations under the United Nation Convention Against Corruption. The WPA 2010 came into force on 15 December 2010 and contained 27 sections altogether. The mechanism of whistleblowing in this legislation starts from Section 6 of the WPA 2010 which is the disclosure of improper conduct. This section highlights two main elements. They indicated the conditions for protection of a whistleblower:

i. disclosure of improper conduct to any enforcement agency, and
ii. such disclosure is not specifically prohibited by any written law.

Section 6(1) of the WPA 2010 provides that a person may take a disclosure of improper conduct to any enforcement agency based on his reasonable belief that any person has

engaged, is engaging, or is preparing to engage in any improper conduct. Furthermore, another element needed to be fulfilled under section 6 (1) is that such disclosure is not specifically prohibited by any written law.

Furthermore, the protections for a whistleblower are provided in light of section 7 to section 10 of the WPA 2010. Section 7 will take effect when Section 6(1) has been complied with sufficiently. Upon analysing the Section 6(1) of the WPA 2010 further, it was found that the problem occurred when the section did not facilitate these two situations; conferring protection if the disclosure was not lodged or channelled to any enforcement agencies via official complaint and the act of disclosure itself must not be prohibited by any written law.

An improper conduct must be disclosed to any enforcement agency within the definition of any ministry, department, agency or any other body set up by the federal government or state government conferred with investigation and enforcement powers (Meng & Fook, 2011). To name a few there are the Royal Malaysian Police, the Malaysian Anti-Corruption Commission, and the Immigration Department. However, allowing one to only whistleblow to the enforcement agency is rather stringent (Ramli, 2018). This will raise an issue of mutual trust and confidence on who may report a certain act of misdeeds and misconduct which is done with the enforcement agencies being the accomplice, directly or indirectly. To date, Malaysians cannot ignore the possibility of Malaysian enforcement agency that may be corrupted or involved in any cases of power abuse. An example is the arrest of more than 12 enforcement officers from the police and the MACC over the 'Nicky Gang' case (Shah, 2021). This gang was involved in organised crimes such as money laundering, commercial crimes and so many others. This is an alarming situation as enforcement officers decided to become accomplices with the criminal that makes a whistleblower quite vulnerable in making the disclosure.

In addition, the requirement that must be fulfilled is that such disclosure is not specifically prohibited by any written law. This clause should be revoked or amended as it is too wide, and any laws may prohibit the protection afforded to the whistleblowers. The review of Section 6 (1) is needed to effectively protect righteous individuals who whistleblow in the best interests of the general public, regardless of law preventing disclosure of confidential information (Ramli, 2018). Therefore, to be genuinely effective, the wordings and interpretation ought to be very specific and clear.

Furthermore, the Official Secret Act 1972 (the OSA 1972) prohibits the spreading of documents relating to public service. There are mainly two types of documents under the OSA 1972. Whilst scheduled official secret refers to federal cabinet documents, state executive council documents and documents concerning national security, defense and international relations; classified official secret involves all official documents which are classified as top secret, secret, confidential and restricted by the Minister or public officer charged with the responsibility concerned. Although there are guidelines to classify the documents, trivial matters may be classified as official secret under the OSA 1972. Section 8 (1) of the OSA 1972 makes it an offence for an unauthorised person to have in his possession or control any official secret, to retain it, use it, communicate it, or fail to take reasonable care of such secret. This clause limits the spread of official information, hence, impliedly it can be used to diminish protections provided under the WPA 2010. In addition, the Public Officers (Conduct & Discipline) (Chapter "D") General Orders 1993 prohibits a public officer to publish, write any book, article or other works which is based on classified official information. An officer also is not allowed to make any public

statement which is detrimental to any policy, programme or decision of the government or which would embarrass the government.

4.2. Legal cases

There are basically few cases in Malaysia that argued about the provisions of the WPA 2010. A Malaysian politician, Mohd Rafizi Ramli was sentenced to 18 months imprisonment by the session Court for unauthorised possession of the 1Malaysia Development Berhad (1MDB) report and disclosing page 98 of the report at a press conference, which violated the section 8(1)(c)(iii) of the OSA 1972 (Ramli, 2017). Ramli became unshielded with any of protection by the WPA 2010. It was reported in 2018, the Court of Appeal substituted the imprisonment with a good behaviour bond (Nazlina, 2018).

In 2014, in another case, Ramli was subjected to section 97(1) of the Banking and Financial Institutions Act 1989 (the BAFIA 1989). The case was decided after the coming into effect of the WPA 2010. Ramli revealed a customer banking documents of the Public Bank Berhad involving misappropriation of public funds through media personnel and a newspaper reporter (Ramli, 2020). The revelation led to the bank customer's being sued for criminal breach of trust. However, Ramli was denied protection under the WPA 2010 for the reason that the information is prohibited by the BAFIA 1989 and he did not disclose it to the enforcement agencies as required by Section 6(1) of the WPA 2010. Ramli argued that the charge against him is against public policy on the ground that he was a whistleblower who had a good faith exercised his duty to the public to disclose serious acts of corruption and abuse of power involving public funds. However, the High Court dismissed the application on the basis that it was pre-mature for the court to decide on it. The court also did not address or pass any remark on the public policy regarding whistleblowers.

Ironically, Ramli was later ordered by the court to pay damages to the respective bank customer in a defamation suit by Datuk Seri Dr Mohamad Salleh Ismail (Ismail, 2016). This decision echoed a European case of Stanley George Adams in 1985. Adams reported about price fixing practices in a pharmaceutical firm, Hoffman-La Rocge (Roche). His disclosure was against the law. He revealed the details of the illegal activity to the competition authorities of the European Union (EU) in Brussels. Unfortunately, he was imprisoned in Swiss jail for the unauthorised disclosure of business secrets.

4.3. Types of protections

The matters that are protected under the WPA 2010 and the parameters of the protections are illustrated in the following table:

Table 2 shows four essential matters that are protected in the WPA 2010 and the extent of the protection. Based on Table 2 the provisions of the WPA 2010 promises protection of the identity of the whistleblower and the confidential information. The former and the latter are protected from any revelation to the judiciary, tribunal or other authority. In addition, the disclosure of improper conduct shall not be subject to any civil, criminal or disciplinary action. The informant and any person related to or associated with the informant are also protected from any detrimental action taken against them. Section 10 of the WPA 2010 explains a detrimental action includes termination of a contract,

withholding a payment that is due and payable or refusal to enter into a subsequent contract by any public body or private body.

Table 2: Matters and parameters of protections

No	Matters Protected	Parameter	Provision
1	Protection of confidential information	The identity of the informant and the information provided is kept confidential and not to be disclosed to anybody, even during the trial in court.	Section 7(1)(a) and Section 8 of WPA 2010
2	Immunity from civil and criminal action	Whistleblower should not be liable to any civil action, criminal or disciplinary consequences of such disclosure.	Section 7(1)(b) and Section 9 of the WPA 2010
3	Protection against detrimental action	Whistleblowers are protected from any act prejudicial to the outcome of the reaction disclosures have been made.	Section 7(1)(c) and Section 10 of the WPA 2010
4	Extension of protection to related person	Protection is also given to those who have connection or relationship with the informant.	Section 7(3) and Section 10(1) of the WPA 2010

Source: MACC (2022)

4.4. Limitation of protections

The protection for an informant of an improper conduct is not absolute. Section 11(1) of the WPA 2010 highlights the limitations of the protection of a whistleblower. The enforcement agency is allowed to revoke the protection under the following circumstances:

i. the whistleblower himself has participated in the improper conduct disclosed;
ii. the whistleblower wilfully made in his disclosure of improper conduct a false material statement;
iii. the disclosure of improper conduct is frivolous or vexatious;
iv. the disclosure of improper conduct principally involves questioning the merits of government policy;
v. the disclosure of improper conduct is made solely or substantially with the motive of avoiding dismissal or other disciplinary action; or
vi. the whistleblower, in the course of making the disclosure or providing further information, commits an offence under the WPA 2010.

These grounds grant the enforcement agency reasoning to withdraw the protection and to some extent become the drawbacks of the WPA 2010.

5. Discussion

Basically, Malaysian legislation provides protection for whistleblowers with certain limitations. The WPA 2010 serves as a legal parameter of protection for a whistleblower after blowing the information of the wrongdoings that had been done either by the employer or any other person internally or externally to an organization. Some provisions presented protections from any detrimental actions that must not be taken upon the whistleblower as a result of the employee's protected disclosure. This has been expressed in Section 7 of the WPA 2010.

Furthermore, the WPA 2010 provides that contractual terms between employers shall be void insofar as it precludes the disclosure of improper conduct, which works to protect the employee's right to blow the whistle. It was governed under the provision of Section 6(5) in the WPA 2010. This showed freedom for an employee to raise any doubtful actions that can bring improper conduct or corruption in a certain organization.

5.1. The United Kingdom position

Recently, improvements have been made in the UK to protect whistleblowers (Al-Haidar, 2017). In the UK, whistleblowing activities are governed under the Public Interest Disclosure Act 1998 (the PIDA 1998) and the Employment Right Act 1996 (the ERA 1996). The PIDA 1998 maps out a practicable method to regulate protected disclosures (Ashton, 2015) by all workers including employees and agency workers (Pyper, 2016; Devi, 2015). Section 43B of the ERA 1996 justifies qualifying disclosure made in public interests and disclosure of 'information', as differ from opinion or allegation (Pyper, 2016). The disclosure of information must not be done by committing an offence, or a breach of legal professional privilege.

Section 43C to section 43F of the ERA 1996 offers more rooms to a whistleblower to channel the information with wider choices. Section 43C of the PIDA 1998 gives the preference to whistle blow to their employer or other responsible individual under good faith. Whilst section 43D of the PIDA 1998 requires a disclosure to a legal adviser, section 43E allows to blow the whistle to the Minister of the Crown. Section 43F extends the application further by providing options channeling information to a prescribed person decided by the Secretary of State. Disclosure in other cases must meet the conditions of section 43G including the worker reasonably believe that he or she will be subjected to difficulty by the exposure. Cases of disclosure to the media agency are accepted as reasonable by the relevant authority (Pyper, 2016). In an unreported judgment case of Kay v Northumberland Healthcare (NHS) Trust (2001), a disclosure of bed shortage in an elderly ward in a form of a satirical letter to Prime Minister for his local press is considered as a serious public concern (Pyper, 2016). Other accepted grounds were balanced with the freedom of expression, no reasonable expectation of action, and an ignorance of employer's whistleblowing policy (Work, 2003). The flexibility is stretched to accept a qualifying disclosure to the media agency (Chien, 2017).

The PIDA 1998 and the ERA 1998 do not grant clear protection to the person that disclose information against any written law. Alternatively, section 43G highlights the elements of good faith in a disclosure and an extension of a reasonable belief to establish truth in the allegation. The legislation adopts a substantial truth procedure dealing with any allegations and the main ingredient of good faith must be fulfilled. Instances channeling the information to funding organizations for an employer are not rejected under the legislation but lack good faith with a concealed motive indicated otherwise. Hence, the UK approach provides a comprehensive protection under the PIDA 1998 and the ERA 1996 for blowing the whistle in accordance with the implementation procedures.

5.2. Disclosure of improper conduct to the enforcement agency

In Malaysia, the disclosure of wrongdoings is to blow the whistle to any of enforcement agencies stated under section 2 and section 6(1) WPA 2010. The disclosure channel must be in line with the requirement of the WPA 2010 and its regulation in order for a

whistleblower to get the protection. As mentioned above, the enforcement agency refers to any ministry, department, agency, or any other body set up by the Federal Government or State Government conferred with investigation and enforcement powers. The main enforcement agencies are the Royal Malaysian Police, Customs Department, Road Transport Department, the Malaysian Anti-Corruption Commission, the Immigration Department, the Companies Commission of Malaysia, and the Securities Commission. Consequently, a whistleblower is not qualified to get protected under the WPA 2010 if the disclosure made was not made to any of the enforcement agencies within the ambit of the law.

The channel of disclosure to enforcement agencies as mentioned in Section 6(1) of the WPA 2010 raises alarming issues with the 2021 incidents. The MACC has arrested 44 individuals consists of officers from Road Transport Department, a traffic police officer, and a former traffic police personnel, dealing with alleged corrupt incidents amounted to RM1.64million (Anis, 2021). The syndicate's involvements were said to conceal lorry drivers with overloading traffic offences. As abovementioned, the same year also witnessed the police arrested 12 enforcement officers from the police and the MACC for their alleged involvements to a fugitive businessman Nicky (Tan, 2021). This development may discourage the inside informer, i.e., the whistleblower from coming forward reporting improper conduct. Enforcement agencies may be susceptible if the duty for watching out for the wrongdoings is solely shouldered by them. It becomes rather inflexible and may risk the establishment of mutual trust and confidence.

5.3. The disclosure is not specifically prohibited by any of written law

The disclosure requirement of not restrained by any of written law under section 6(1) of WPA 2010 creates challenges that may impair the revelation further. The abovementioned discussions about Rafizi's case illustrated the legal hurdles provided by the OSA 1972 and the BAFIA 1989. By forbidding the exposure of secret information, it may lead to the whistleblower becoming vulnerable in blowing the wrongdoings. In light of justice, it is inevitable that some sort of situation requires the revelations of secret information to prove the corruption occurring in an organization. The strength of the WPA 2010 will further deteriorate if the amendment or any enhancement is not cultivated with any single step.

6. Conclusion

In comparison, both jurisdictions in Malaysia and the United Kingdom provide slightly similar reliability in disclosure of improper conduct for the protection of whistleblower. The UK has taken an additional step by specifying the channels to disclose with a wide range of options that would help encourage workers and individuals to come forward and thus reach the objective of being a whistleblower.

Several recommendations can be seriously considered to improve the legal framework for whistleblower protection in Malaysia. The improvement recommendations involve widening the disclosure channel for whistleblowers to blow the whistle. Lesson to be learned from the UK position is to introduce a wide range of people to whom a disclosure can be made. The case of Kay recognising a qualifying disclosure to the press and afforded protection for a serious public concern provides a certain level of trust and confidence for whistleblowers. In extreme circumstances, disclosure to other relevant organisations, bodies or departments should be allowed as there may be situations in which improper

conduct involves the enforcement agency itself either directly or indirectly. Hence, a better enhancement needed to be advocated in Section 6(1) of the WPA 2010 for a wide disclosure channel to apply.

Furthermore, suggestions to improvise the provisions related to disclosure of information prohibited under specific written laws. The case of Rafizi illustrated the legal challenges to protect the whistleblower. Inevitably, the disclosure that is against any written law cannot be abolished easily but providing additional elements to enhance the system can partially address the current situations. Section 45G of the ERA 1996 highlighted the requirement of good faith for a whistleblower to be protected under the law under the premise that the worker reasonably believes that it is a detrimental circumstance, and the evidence will be destroyed or concealed if no disclosure made. In short, it is hope that the Malaysian position will improve to provide a safe platform for the whistleblowers in assisting the move to curb corruptions in the country. There will always be doubt for any individuals to step forward in becoming a whistleblower even with a solid protection promised to him or her.

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