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# **Enhancing Anti-Corruption, Accountability and Transparency Laws in the Malaysia's Health Sector**

**Noraiza Abdul Rahman<sup>1</sup>, Mazlina Mohamad Mangsor<sup>2</sup>, Siti Hafsyah Idris<sup>3</sup> & Nur Ezan Rahmat<sup>4</sup>**

Faculty of Law,  
Universiti Teknologi MARA, 40450 Shah Alam, Selangor, Malaysia

[noraizarahman@uitm.edu.my](mailto:noraizarahman@uitm.edu.my), [mazli774@uitm.edu.my](mailto:mazli774@uitm.edu.my), [sitihafsyah@uitm.edu.my](mailto:sitihafsyah@uitm.edu.my), [nurezan@uitm.edu.my](mailto:nurezan@uitm.edu.my)  
Tel: +6019-9210093

### **Abstract**

Good governance, alongside the principles of accountability and transparency, are potential strategies for combating corruption in the healthcare sector. This study aims to examine the role of law to curb the corrupt practices, and it employs a qualitative research methodology through a content analysis approach in which all relevant literature on corruption and law are reviewed. The major finding has significant implications for lawmakers to propound legislative framework for the risks of corruption in the healthcare sector towards promoting accountability and transparency. This paper concludes that the law is an effective tool for instigating change to the healthy anti-corruption environment.

Keywords: Corruption; risks; laws; healthcare

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### **1.0 Introduction**

The public healthcare services in Malaysia are funded through general taxation, are delivered in various premises, including hospitals, community centres and school-based health clinics. The public health care system provides universal health care coverage at a highly subsidised rate. The services cover hospitalisation, primary health care services, health promotion and disease prevention (WHO, 2014)..

Regardless of sectors available for healthcare practitioners to deliver their services, it is a legal obligation that all healthcare team members be registered with the local council or body that governs that particular area of profession. In addition to registration, healthcare professionals obtain an annual practising certificate that allows these individuals to practice for that specific year. For medical and dental professionals, the registration and annual practising certificate are issued by the Malaysian Medical Council and Malaysian Dental Council, respectively, following the regulations stipulated in the Medical Act 1971 and Dental Act 1971 (Malaysian Medical Council, 2021; Medical Dental Council, 2021).

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## 2.0 Literature Review

### 2.1.1 An Overview of Corruption in the Healthcare Sector

One of the unethical and unprofessional conduct reported among Malaysian medical and dental healthcare professionals includes corruption (The Edge, 2013). Corruption, defined as 'dishonest or illegal behaviour, especially of people in authority (Oxford, 2021) may occur among medical and dental healthcare professionals in various ways. Some ways corruption may happen include bribery, misuse of information, creating a conflict of interest, nepotism, clientelism and favouritism (Graycar, 2015). Corruption is a behaviour, which deviates from the regular duties of a public role because of personal relationships (Siddiquee, 2019, Heidenheimer, et al., 1989). This includes such behaviour as bribery (use of reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage because of inscriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses) (Heidenheimer et al., 1989).

In Malaysia, litigation against medical and/or dental practitioners, particularly cases that involve corruption, have been reported (The Edge, 2013; "District Health Officer Charged with 49 Counts of Corruption Involving More than RM800,000," 2020; New Straits Times, 2020). Although access to the official report of such cases is not made publicly available, the citizens are often made aware of such news through the mass media. To curb this issue, the Special Committee on Corruption has been established by the Malaysian Anti-Corruption Commission to investigate corruption cases within the healthcare system (Malaysian Anti-Corruption Agency, 2020). In the 2020 corruption perceptions index, Malaysia scored 51 per cent. This rank is 2 per cent less compared to the 2019 report. Malaysian position is at 57 out of 180 countries. This was significantly contributed by the legal action against the former Prime Minister of Malaysia for soliciting gratification (Siddiquee & Zafarullah, 2020).

### 2.1.2 The Roles of Law in Curbing Corruption

The Malaysian Anti-Corruption Commission Act (hereinafter 'the MACCA') 2009 was enacted and came into force on 1 January 2009. The MACCA criminalises the acts of corruption and abuse of power at public sectors and private entities including health sector. The term gratification under section 3 of the MACCA ranges from a willingness to do an act in which includes an offer, undertaking, donation, financial benefit, dignity, agreement to give employment, discharge, liability, commission, rebate, to the act of abstaining from doing anything including forbearance to demand any money and restraining from the exercise of any right.

The duty to report bribery transaction arises when the person is the provider or the receiver of any gratification in any form at the pre-bribery stage, including attempt, promise and offer, or the actual bribery transaction post-bribery stage under section 25 of the MACCA. Furthermore, the dealing with, using, holding, receiving or concealing gratification or advantage using any property concerning any offence is explained under section 26 of the MACCA. The Act has an extraterritorial effect dealing with bribery of foreign public officials under section 22 of the MACCA. A foreign public official acting as a provider or a receiver of any gratification dealing with using influence or performing or aiding in procuring or delaying or preventing the granting of any contract commits an offence.

The latest significant amendment of the Act was the introduction of section 17A of the MACCA. It came into force in June 2020 to address the corporate criminal liability where a corporation can be held liable together with a director of the company or respected officers involved in the company for failure to prevent bribery (C. K. Low & Low, 2020). This concept is in line with the existing provisions of the Malaysian Companies Act 2016 and the common law rules on 'lifting of corporate veil' established in numerous cases in Malaysia.

In 2001, the Anti-Money Laundering Act was introduced in Malaysia, which now reads as the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA) and later is only known as AMLA. The recent amendment in 2013 aims to address "the proceeds of an unlawful activity" in addition to property involved in or derived from money laundering and terrorism financing offences. The AMLA provisions are enacted for legal actions against property, and these offences are referred to as the predicate offences. Under normal circumstances, the suspect is charged under other law(s) for soliciting or accepting bribery and is accompanied by the provision of the AMLA. Section 4(1) of the AMLA falls under the predicate offence to control money laundering, and section 4A provides for structuring transactions to evade reporting.

### 2.1.3 The Role of the Judiciary in Promoting Anti-corruption, Accountability and Transparency

The most infamous case that has drawn Malaysian and global attention related to public officials was none other than the 1MDB scandal associated with the former Malaysian Prime Minister, Datuk Seri Najib Razak. The Malaysian court and the US court address the most significant financial scandal in Malaysia, with US \$4.5 billion disappearing from the 1MDB fund (Siddiquee & Zafarullah, 2020). Out of the mentioned amount, the US \$681 million claimed to be found in the former Prime Minister's account and close associates via the off-shore bank accounts (Siddiquee & Zafarullah, 2020). This case is further discussed in *PP v. Dato' Sri Mohd Najib Hj Abd Razak* [2020] 8 CLJ 319; the accused, the former Prime Minister and Minister of Finance of Malaysia, was charged with a single count of abuse of position for gratification under section 23(1) of the MACCA and three counts of money laundering under section 4(1) of the AMLA. The charge under the MACCA alleged that the accused, between 17 August 2011 and 8 February 2012, as a public officer, had used his office for the gratification of RM42 million by involving himself in the decision of the Government to provide guarantees for the financing of RM4 billion made available by Kumpulan Wang Persaraan ('KWAP') to a company known as SRC International Sdn Bhd ('SRC'), whilst the charge section 4(1) of the AMLA respectively alleged: (i) that the accused, as an agent of SRC, namely as the Prime Minister, Finance Minister and Advisor Emeritus of SRC, was entrusted with dominion over properties belonging to the company, and in that capacity, had committed criminal breach of trust of a total of RM42 million thereof in violation of the said section 409 of the Penal Code; and (ii) that the accused had committed money laundering by receiving a total of RM42 million which was the proceeds of unlawful activity or activities into his

personal bank accounts. The court, in this case, allowed the application of the accused of a stay of execution of the sentence of fine in this case.

### 3.0 Methodology

Our study employs doctrinal analysis to synthesise diverse sources, including various statutory provisions, regulatory principles, interpretive guidelines and framework (Hutchinson & Duncan, 2012), related to anti-corruption, accountability and transparency in the frame of the healthcare system in Malaysia. The doctrinal analysis involves examining the regulations and policies contributing to accountability and transparency in the health sector. This method is mainly characterised by the study of legal texts, and, for this reason, it is often described colloquially as "black-letter law" (Chynoweth, 2008). In addition, the secondary data were analysed to investigate the theories, concepts and legal commentaries underpinning the study on the risk factors of corruption in the healthcare sector. Full texts were reviewed, and articles with only casual referencing of corruption in other sectors or did not propose theoretical legal constructs or provide empirical evidence were excluded. Data analysis approaches adopted by this research emphasise an interpretive method. This research supports this method in producing suggestions to improve the current legal position on the risks of corruption in the healthcare sector in Malaysia and also relates to the significance of doctrinal research in formulating legal doctrines through the analysis of legal rules.

### 4.0 Findings and Discussion

Under the MACCA, offering and accepting gifts, services, and hospitality will be a corruption offence if there is the requisite intention for such an offer or acceptance to be a bribe. The MACCA does not contain any provision for a de minimis threshold. The Malaysian Government has issued the Guidelines on Giving and Receiving of Gifts in the Public Service / Service Circular No. 3 of 1998 (the "Circular"), which sets out the parameters concerning giving and receiving gifts. The Circular provides that as a general rule, the amount or value of a gift is considered not commensurate with the gift's purpose if the gift's value exceeds one-fourth of the officer's monthly remuneration or MYR500, whichever is lower. Accordingly, public officials are generally not allowed to receive or give gifts or allow their spouse or any other person to receive or give on their behalf any gift. The gift, be it in tangible form or otherwise, from or to any person, association, body or group of persons if the receipt or giving of such presence is in any way connected, either directly or indirectly, with his or her official duties. However, there are exceptions for certain personal celebrations such as retirement, assignment transfer or marriage. There is also an exception if the circumstances make it difficult for the officer to refuse the gift.

The existing penalty under the MACCA and AMLA does not provide for a mandatory day for imprisonment, unlike the former Anti-Corruption Act 1997 that imposed 14 days minimum jail. In other words, the latest update of the graft law provides for one-day minimum imprisonment and may be considered more lenient compared to the old regime. Furthermore, the amount of RM10,000 may be regarded as small compared to the millions of Ringgit Malaysia collected through bribery, money laundering and other illegal activities. Repeated offenders are not addressed under the MACCA for a severe penalty. It was suggested that the provisions should be enhanced with mandatory whipping and a higher fine (Satar, 2019). Section 409 and section 420 of the Penal Code provide examples of a deterrent law with a minimum of one year and two years imprisonment with whipping. Section 23 of the MACCA requires a presumption of the existence of an interest in order to establish a case. The scenario of not attending a meeting that discussed the proposed favour and approved by other members in a meeting requires a serious initiative by the MACC to control this type of practice amongst the government servants. As mentioned earlier, section 214(2) of the Companies Act 2016 may provide an example in drafting conditions to be fulfilled by a director to establish that he has performed his business judgment in accordance with the law.

In addition to all the relevant laws controlling the soliciting or accepting of bribery, Bank Negara provides for the Risk-Based Approach (RBA) Guide in order to identify and assess the institutional exposure to the money laundering risks and taking reasonable measures to manage the risks (Anti Money Laundering and Counter Financing Terrorism, 2014). The Guide details certain sectors, including the insurance sector that highlights the nature and level of risk of life insurance products that may relate to the services provided in a public hospital.

Under the MACCA, the law imposes liability on any person associated with the organisation, including the company's directors, officers, partners, employees or anyone who performs services on behalf of the organisation held personally responsible and this is applicable to the health sector as well. The individual could face prosecution and imprisonment of up to 20 years if the company did not have adequate procedures to prevent corruption. Companies could be fined "not less than ten times the value of the gratification or RM1million, whichever is higher" under the MACCA. Before introducing section 17A, the MACCA had only primarily focused on the prosecution of natural persons involved in corruption. Through this latest introduction, the MACC can now directly impose corporate liability on commercial organisations, including public and private limited companies whose employees or associated persons are involved in corrupted practices and dishonest commercial misconducts.

Generally, sentencing and judges' decision-making processes are highly influenced by legal variables such as crime severity, prior conviction, and plea versus trial conviction (Smith & Damphousse, 1996). However, there are also many extra-legal variables that are believed to be very influential in the process (Idrus et al., 2017). These extra-legal variables include age, sex, education, and other categorical attributes such as the political affiliation of the offender. It is evident that political connection is strongly correlated to the sentence length or sentence severity, such that they reported political affiliation as the best predictor of sentence severity (Satar, 2010). The regulation's intention is for corporate boards and management to oversee the risk of corruption in their companies and set the top's right culture. Hence, companies should proactively strengthen their anti-bribery and corruption programs and automate their due diligence

workflows. They should anticipate an increase in global anti-corruption investigations accompanied by a rise in the cost of enforcement actions.

It is apparent that the laws and regulations on corruption provide wide-ranging investigation powers, including powers for law enforcement agencies and the Government of Malaysia to freeze, seize and confiscate or forfeit the proceeds or properties that are used or suspected to be used in corruption, money laundering or terrorism financing, and gives power to the court to forfeit properties derived from the proceeds of the "serious offences" (Satar, 2010). One more argument needed to strengthen this fact is that the Acts strive to provide the most effective tool to help law enforcement and regulatory agencies to prevent corruption, money laundering and terrorism financing.

## 5.0 Conclusion

In conclusion, it can be submitted that some of the literature sheds light on what constitutes good governance towards promoting anti-corruption, accountability and transparency, and what needs to be done to achieve it. To create an accountable and transparent governance framework in Malaysia, it is critical to act now in building protections both within and outside healthcare systems to eliminate abuse and enhance anti-corruption health outcomes. These are not only important for healthcare communities but crucial for governments and societies.

Furthermore, it is no doubt that several essential aspects of the discussion in this paper need further studies since this research has been unable to provide an analysis of every aspect due to time and space limitations. Accordingly, the research presented here will be taken further by a study that focuses on a particular method related to corruption, such as the level of accountability, corruption detection methods, the effectiveness of anti-corruption efforts, and the proposed legal framework. Bearing in mind the significant issues involved in corruption in the healthcare sector, it is vital to carry out further research on other potential issues, as stated earlier.

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