The copyright © of this thesis belongs to its rightful author and/or other copyright owner. Copies can be accessed and downloaded for non-commercial or learning purposes without any charge and permission. The thesis cannot be reproduced or quoted as a whole without the permission from its rightful owner. No alteration or changes in format is allowed without permission from its rightful owner.

# AN ANALYSIS OF THE LAW ON ILLICIT ENRICHMENT AND ASSET DECLARATION IN PREVENTING CORRUPTION: THE CASE OF MALAYSIA

**NORATIKAH BINTI MUHAMMAD AZMAN NG**

Universiti Utara Malaysia

**DOCTOR OF PHILOSOPHY**
**UNIVERSITI UTARA MALAYSIA**
**2025**

# AN ANALYSIS OF THE LAW ON ILLICIT ENRICHMENT AND ASSET DECLARATION IN PREVENTING CORRUPTION: THE CASE OF MALAYSIA

**NORATIKAH BINTI MUHAMMAD AZMAN NG (903113)**

Universiti Utara Malaysia

**A thesis submitted to the Ghazali Shafie Graduate School of Government in fulfilment of the requirements for the Doctor of Philosophy Universiti Utara Malaysia**

Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
*(College of Law, Government and International Studies)*
**UNIVERSITI UTARA MALAYSIA**

**PERAKUAN KERJA TESIS / DISERTASI**
*(Certification of thesis / dissertation)*

Kami, yang bertandatangan, memperakukan bahawa
*(We, the undersigned, certify that)*

**NORATIKAH MUHAMMAD AZMAN NG (903113)**

calon untuk Ijazah **DOCTOR OF PHILOSOPHY (LAW)**
*(candidate for the degree of)*

telah mengemukakan tesis / disertasi yang bertajuk:
*(has presented his/her thesis / dissertation of the following title):*

**AN ANALYSIS OF THE LAW ON ILLICIT ENRICHMENT AND ASSET DECLARATION IN PREVENTING CORRUPTION: THE CASE OF MALAYSIA**

seperti yang tercatat di muka surat tajuk dan kulit tesis / disertasi.
*(as it appears on the title page and front cover of the thesis / dissertation).*

Bahawa tesis/disertasi tersebut boleh diterima dari segi bentuk serta kandungan dan meliputi bidang ilmu dengan memuaskan, sebagaimana yang ditunjukkan oleh calon dalam ujian lisan yang diadakan pada **19 OGOS 2024**

*That the said thesis/dissertation is acceptable in form and content and displays a satisfactory knowledge of the field of study as demonstrated by the candidate through an oral examination held on:* ***AUGUST 19, 2024***

| | | | | |
|---|---|---|---|---|
| Pengerusi Viva *(Chairman for Viva)* | : | **ASSOC. PROF. DR. MOHAMMAD AZAM HUSSAIN** | Tandatangan *(Signature)* | |
| Pemeriksa Luar *(External Examiner)* | : | **PROF. DR. ASHGAR ALI ALI MOHAMED (IIUM)** | Tandatangan *(Signature)* | Ashgar |
| Pemeriksa Dalam *(Internal Examiner)* | : | **ASSOC. PROF. DR. ASMAR ABDUL RAHIM** | Tandatangan *(Signature)* | |
| Tarikh Date | : | **19 AUGUST 2024** | | |

| | | | |
|---|---|---|---|
| Nama Pelajar *(Name of Student)* | : | **NORATIKAH MUHAMMAD AZMAN NG (903113)** | |
| Tajuk Tesis *(Title of the Thesis)* | : | **AN ANALYSIS OF THE LAW ON ILLICIT ENRICHMENT AND ASSET DECLARATION IN PREVENTING CORRUPTION: THE CASE OF MALAYSIA** | |
| Program Pengajian *(Programme of Study)* | : | **DOCTOR OF PHILOSOPHY (LAW)** | |
| Penyelia Pertama (*First Supervisor*) | : | **PROF. DR. ZAINAL AMIN AYUB** | Tandatangan *(Signature)* |
| Penyelia Kedua (*Second Supervisor*) | : | **ASSOC. PROF. DR. ROHANA ABDUL RAHMAN** | Tandatangan *(Signature)* |

Universiti Utara Malaysia

# PERMISSION TO USE

In presenting this thesis in partial fulfillment of the requirement for PhD degree from Universiti Utara Malaysia, I agree that the University Library may make it freely available for inspection. I further agree that permission for copying of this thesis in any manner either in whole or in part, for scholarly purpose may be granted by my supervisor or in his absence, by the Dean, Ghazali Shafie Graduate School of Government, UUM College of Law, Government and International Studies (UUM COLGIS). It is understood that any copying or publication or use of this thesis or part thereof for financial gain shall not be allowed without my written permission. It is also understood that due recognition shall be given to me and to the Universiti Utara Malaysia for any scholarly use which may be made of any material from this thesis.

Request for permission to copy or to make use of material in this thesis, in whole or in part, should be addressed to:

Dean (Ghazali Shafie Graduate School of Government)

UUM College of Law, Government and International Studies (UUM COLGIS)

Universiti Utara Malaysia

06010 UUM Sintok

Universiti Utara Malaysia

# ABSTRACT

The growth of illicit enrichment (IE) crime is a significant challenge in combating corruption. IE is defined as a significant increase in the assets of a public officer that he or she cannot reasonably explain in relation to his or her lawful income. The secretive nature of IE makes it a complicated and argumentative crime. Hence, a well-designed and structured asset declaration (AD) system can serve as a tool to detect public officers' wealth and effectively prevent IE. The problems addressed in this study are the lack of clarity in Malaysia's IE law, where the current provision under Section 36 is ineffective in preventing IE, and it does not explicitly define IE as an offence, and there is no specific AD law requiring public officers to disclose their assets. The objectives of this research are to study the effectiveness of Section 36 of the MACC Act 2009, analyse the implementation of AD rules, examine IE legal frameworks from other countries, and propose improvements to Malaysia's IE law. The researcher employed a doctrinal approach and qualitative research methodology. A semi-structured interview was conducted with expert respondents selected based on their experience with those issues. The scope of the study is limited to the issues of corruption, IE, and asset disclosure among public officers only. A comparison of provisions was also made between the current section 36 and section 10 of the Prevention of Bribery Ordinance Hong Kong, which has been presented and discussed in detail as a reference for Malaysia. To address the problem, the criminalisation of corruption indicators such as IE is necessary, and Malaysia needs to study and adopt the IE legal framework from Hong Kong. The findings of this study indicate that Malaysia lacks a clear and specific provision on IE, as well as a specific AD law requiring public officers to disclose their assets. In fact, the clandestine nature of illicit enrichment crimes and the ineffectiveness of section 36 have identified several issues, challenges, and weaknesses in the wording, application and implementation of section 36. The proposed recommendations to address the issues suggest implementing the revised version of section 36 and enacting a new provision to mandate AD in Malaysia to fight corruption effectively.

**Keywords**: Illicit Enrichment, Crime, Corruption, Asset Declaration, Malaysian Anti-Corruption Commission Act 2009

# ABSTRAK

Peningkatan jenayah pengkayaan secara haram merupakan satu cabaran besar dalam memerangi rasuah. Pengkayaan secara haram atau (IE) ditakrifkan sebagai peningkatan ketara dalam aset pegawai awam yang tidak dapat dijelaskan dengan munasabah dan kaitannya dengan pendapatannya yang sah. Pengkayaan secara haram yang bersifat rahsia membuatkan ianya satu jenayah yang rumit dan menimbulkan pertelingkahan. Jadi, sistem pengisytiharan aset yang baik dan berstruktur boleh menjadi satu medium untuk mengesan kekayaan pegawai awam dan mencegah pengkayaan secara haram dengan efektif. Masalah kepada kajian ini ialah ketiadaan undang-undang IE di Malaysia yang jelas, dimana undang-undang sedia ada iaitu seksyen 36 tidak efektif dalam mencegah IE, dan ianya tidak mentakrifkan IE sebagai satu jenayah dan tiada undang-undang pengisytiharan aset yang spesifik dalam mewajibkan pegawai awam mengisytiharkan aset. Objektif kajian ini adalah mengkaji keberkesanan seksyen 36 Akta SPRM 2009, menganalisa pelaksanaan undang-undang pengisytiharan asset, mengkaji undang-undang IE dari negara-negara lain dan menyarankan penambahbaikan kepada undang-undang IE di Malaysia. Penyelidik menggunakan pendekatan doktrinal dan kaedah metodologi kajian kualitatif. Temu bual separa berstruktur telah dijalankan dengan responden yang mahir yang dipilih berdasarkan pengalaman mereka dalam isu tersebut. Skop kajian ini terhad kepada isu rasuah, IE dan pengisytiharan aset dalam kalangan pegawai awam sahaja. Perbandingan undang-undang juga dibuat antara seksyen 36 dan seksyen 10 *Prevention of Bribery Ordinance Hong Kong* yang telah dibentangkan dan dibincangkan secara terperinci sebagai rujukan untuk Malaysia. Untuk menangani masalah ini, adalah wajib untuk menjenayahkan indikator rasuah iaitu IE dan Malaysia perlu mengkaji dan menerima pakai rangka kerja undang-undang IE dari Hong Kong. Dapatan kajian ini juga menunjukkan bahawa Malaysia tidak mempunyai undang-undang yang jelas dan khusus berkaitan IE, serta tiada undang-undang pengisytiharan aset yang khusus yang mewajibkan pegawai awam mengisytihar aset mereka. Tambahan pula, kerahsiaan jenayah pengkayaan secara haram dan ketidakberkesanan seksyen 36 telah mengenal pasti beberapa isu, cabaran dan kelemahan dalam perkataan, penggunaan dan pelaksanaan seksyen 36. Cadangan dalam menangani isu ini ialah seksyen 36 yang telah ditambah baik dan dikaji semula harus dilaksanakan dan undang-undang pengisytiharan aset yang baru perlu dilaksanakan di Malaysia untuk menangani rasuah secara efektif.

**Kata kunci:** Pengkayaan Secara Haram, Jenayah, Rasuah, Pengisytiharan Aset, Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009

# ACKNOWLEDGEMENT

In the name of Allah, the Most Gracious and the Most Merciful.

Alhamdulillah. First and foremost, I praise Allah for His blessings and mercy, and for providing me with His guidance and strength throughout this journey. After five years of hard work and dedication, I have completed this thesis.
Hadza min fadhli Rabbi.

I would like to acknowledge my sincere gratitude and appreciation to the following individuals:

To my supervisors, Prof. Dr. Zainal Amin Ayub and Assoc. Prof. Dr. Rohana Abdul Rahman, who have supported me throughout the years and encouraged me each step of the way. I appreciate your guidance and attention during the entire process of completing this thesis. I am extremely thankful for having such kind and supportive supervisors. Your encouragement, guidance and kind words mean everything to me.

I pray for you both nothing but the best of both worlds and may Allah reward you both with the highest ranks in Jannah for your kindness, assistance, and guidance.

I would also like to express my gratitude to the faculty and staff of UUM School of Law and GSGSG, the lecturers from my Academic Writing and Legal Research Methodology classes, as well as the respondents who have been a part of this journey.

Additionally, I extend my thanks to the committee of examiners for their time and dedication in evaluating this thesis.

Finally, I am grateful to everyone who has supported me, directly or indirectly, in completing this thesis.

Universiti Utara Malaysia

# DEDICATION

This thesis is dedicated to:

To my parents, Mak & Abah, thank you for your prayers, love, and unwavering encouragement and support throughout my life.

To my sister, Normardiyah, thank you for your constant words of encouragement. I am deeply grateful for your support during difficult times and for motivating me to pursue my doctoral studies despite my doubts and uncertainties. Thank you for believing in me and my dreams; it has meant everything.

To my beloved husband, Muhammad Nur Hafiz. Thank you for the endless love, care, prayers, and consistent encouragement he has given me, and for the unwavering support he provides in abundance.

And to my entire family for being such strong pillars of support throughout my life. Your prayers and kind words made this thesis possible.

May Allah bless us with His guidance and mercy and reunite us in Jannah. Ameen.

The journey has been unexpected but profoundly worth the effort.

May this thesis serve as a valuable resource of knowledge and insights for those who engage with it, contributing positively to the academic community.

Universiti Utara Malaysia

# TABLE OF CONTENTS

**CERTIFICATION OF THESIS**.....**i**
**PERMISSION TO USE**.....**ii**
**ABSTRACT**.....**iii**
**ABSTRAK**.....**iv**
**ACKNOWLEDGEMENT**.....**v**
**DEDICATION**.....**vi**
**LIST OF TABLES**.....**xii**
**LIST OF FIGURES**.....**xiii**
**LIST OF APPENDICES**.....**xiv**
**LIST OF LEGISLATIONS**.....**xv**
**LIST OF CASES**.....**xvii**
**LIST OF ABBREVIATIONS**.....**xviii**

**CHAPTER ONE**.....**1**
**INTRODUCTION**.....**1**
1.1 Background of the Study.....1
1.2 Problem Statement.....12
1.2.1 The law on illicit enrichment crime in Malaysia.....13
1.2.2 The law on disclosure of assets in Malaysia.....24
1.3 Research Questions.....31
1.4 Research Objectives.....32
1.5 Significance of The Study.....32
1.6 Research Methodology.....34
1.6.1 Research Design.....34
1.6.2 Research Scope.....39
1.6.3 Types of Data.....40
1.6.4 Sampling and Selection.....41

Universiti Utara Malaysia

1.6.5 Data Analysis ..... 49
1.7 Limitation of the Study ..... 61
1.8 Literature Review ..... 63
1.8.2 The legal issues and Implications of Corruption ..... 63
1.8.3 The Fundamental Concept of Illicit Enrichment ..... 68
1.8.4 The Asset Declaration System ..... 73
1.9 Outlines of Chapters ..... 77
**CHAPTER TWO ..... 79**
**DEFINITION, CONCEPTS, HISTORICAL BACKGROUND OF CORRUPTION, THEORIES AND INITIATIVES TO FIGHT CORRUPTION AND ILLICIT ENRICHMENT FROM A MALAYSIAN PERSPECTIVE ..... 79**
2.0 Introduction ..... 79
2.1 Definition of Terms ..... 79
2.1.1 Corruption ..... 80
2.1.2 Illicit Enrichment ..... 86
2.1.3 Public Officer ..... 89
2.1.4 Financial Disclosure or Asset Declaration ..... 92
2.2 Conceptual definitions of Corruption, Illicit Enrichment, and Public Officials in Hong Kong, Singapore, and Malaysia ..... 94
2.2.1 Corruption ..... 94
2.2.2 Illicit Enrichment ..... 97
2.2.3 Public Official ..... 103
2.3 Historical Background of Corruption. ..... 105
2.4 Types of Corruption ..... 112
2.5 Concept of Wilful Blindness ..... 128
2.6 Broken Window Theory ..... 132
2.7 Malaysian Initiatives to fight Corruption & Illicit Enrichment ..... 134
2.7.1 Initiative by the Rule of law ..... 135
2.7.2 Initiative by Inspection and Consultancy Division ..... 142
2.8 Conclusion ..... 154

**CHAPTER THREE** ..... **156**
**THE INTERNATIONAL LEGAL FRAMEWORK ON ILLICIT ENRICHMENT AND ASSET DECLARATION** ..... **156**
3.1 International Initiatives to fight Corruption and Illicit Enrichment ..... 156
3.1.1 The IACAC ..... 156
3.1.2 The African Union Convention ..... 158
3.1.3 The UNCAC ..... 159
3.1.4 The European Union ..... 163
3.1.5 The Asia-Pacific Region ..... 164
3.1.6 The OECD Convention ..... 165
3.1.7 The Commonwealth ..... 166
3.2 Regulatory legal frameworks for illicit enrichment worldwide and other countries' experiences with the offence of corruption and illicit enrichment. ..... 169
3.2.1 Singapore ..... 172
3.2.2 Hong Kong ..... 177
3.2.3 Argentina ..... 185
3.2.4 Egypt ..... 188
3.2.5 Conclusion ..... 192
3.3 International Legal Framework on Asset Declaration ..... 195
3.3.1 Introduction ..... 195
3.3.2 The Importance of Having IAD System & Law ..... 196
3.3.3 International Provisions of IAD ..... 200
3.3.4 Conclusion ..... 204
3.4 Research Question 3: Which illicit enrichment regulatory legal frameworks from other countries should Malaysia use as a reference? ..... 205
**CHAPTER FOUR** ..... **232**
**LEGAL FRAMEWORK ON ILLICIT ENRICHMENT IN MALAYSIA** ..... **232**
4.1 Introduction ..... 232
4.1.1 The main elements of illicit enrichment crime. ..... 234

Universiti Utara Malaysia

4.1.2 There is no specific definition of illicit enrichment under Malaysian Law. .....238
4.1.3 Illicit enrichment is not specified as a crime or specific offence under Malaysian law. .....239
4.1.4 Section 36 can only be pursued when an investigation under the predicate offence of MACC is underway, and illicit enrichment must be proven under the predicate offence. .....240
4.1.5 The wording under Section 36 can be disadvantageous to the prosecution. .....251
4.1.6 The Presumption of Innocence and the Reverse Burden of Proof. .....254
4.1.7 The case under Section 36 is very limited, and there have been no reported cases of illicit enrichment by the court. .....265
4.1.8 Limited resources and no statistical data and literature review under Section 36 issue .....278
4.1.9 An investigation under Section 36 can only be triggered when there is a report of corruption, misuse of power, or any related offences under Malaysian legislation. .....280
4.1.10 Challenges during investigation: evidence and witnesses .....282
4.1.11 Challenges during investigation: challenges to investigating high-profile individuals .....294
4.1.12 Challenges during investigation: It is challenging to prove Section 36 because it involves forensic accounting and requires meticulous calculation by an expert. .....297
4.1.13 Beneficial ownership issue or proxy .....302
4.1.14 The lack of a legal definition of illicit enrichment in Malaysia makes proving *mens rea* difficult in prosecutions. .....305
4.1.15 Findings and Analysis of Research Question 1 .....309
**CHAPTER FIVE** .....**319**
**LEGAL FRAMEWORK ON ASSET DECLARATION** .....**319**
5.1.1 Introduction .....319
5.1.2 MACC and Asset Declaration .....322
5.1.3 Regulation 10, Public Officers (Conduct and Discipline) Regulations 1993, and Service Circular No. 3 of 2002 .....326
5.1.4 Human Resources Management Information System (HRMIS) .....327

Universiti Utara Malaysia

5.1.5 Relationship between asset declaration and illicit enrichment. .....328
5.1.6 Penalties for offences relating to asset declaration. .....329
5.1.7 Initiatives by the Malaysian Government on Asset Declaration for public officers and Members of Parliament. .....336
5.1.8 Cases of public officers failing to comply with asset declarations. .....341
5.1.9 Challenges Arising from the Absence of an Asset Disclosure Law .....343
5.1.10 Public access to Asset Declaration and Confidentiality concerns .....345
5.1.11 Findings and Analysis of Research Question 2 .....350
**CHAPTER SIX** .....**355**
**FINDINGS AND RECOMMENDATIONS** .....**355**
6.1 Introduction .....355
6.2 Summary of Findings .....355
6.2.1 International Legal Frameworks to combat corruption and illicit enrichment .....356
6.2.2 Malaysian Legal Framework to combat corruption and illicit enrichment .....357
6.2.3 The Legal Framework for Asset Declaration in Malaysia .....362
6.3 Recommendations .....365
6.3.1 The Legal Framework for Illicit Enrichment .....367
6.3.2 The Legal Framework for Asset Declaration .....384
6.4 Conclusion .....396
**REFERENCES** .....**402**
**APPENDICES** .....**427**

Universiti Utara Malaysia

# LIST OF TABLES

Table 1.1 Corruption Perceptions Index 2017-2022 ..... 4

Table 1.6.4 Classifications of Respondents ..... 47

Table 2.7.1 Trajectory of Anti-Corruption Laws and Agency Evolution in Malaysia. ..... 135

Table 3.4.1 The Description of Offence and Punishment of Section 36 of the Malaysian Anti-Corruption Commission Act 2009 and Section 10 of the Prevention of Bribery Ordinance (Chapter 201) (POBO) Hong Kong ..... 208

Table 3.4.2 The summary of the comparative analysis between Section 36 of the MACCA and Section 10 of POBO HK ..... 212

Table 5.1.6 Sanctions for non-compliance of asset declarations ..... 331

Table 6.3.1.1 The current Section 36 of the MACCA……..... 368

Table 6.3.1.2 The newly proposed Section 36A to be read together with the current Section 36 of the MACCA……..……...…...370

Universiti Utara Malaysia

# LIST OF FIGURES

Figure 1.2 The Problems of Illicit Enrichment Crime in Malaysia .....13
Figure 1.6.4 Criteria of Sampling .....45
Figure 1.6.5.1 The Data Analysis Stages .....51
Figure 1.6.5.2 Summary of Research Methodology .....60
Figure 2.7.1 The Hierarchy of Anti-Corruption Law.....138
Figure 4.1.1 The Main Elements of Illicit Enrichment .....235
Figure 4.1.15 Conceptual Framework on the issues, challenges and weaknesses of Section 36 of the MACCA.....310
Figure 5.1.6 Enforced sanctions mechanism .....330
Figure 5.1.11 Conceptual Framework on the issue of asset declaration in Malaysia .....351

Universiti Utara Malaysia

# LIST OF APPENDICES

APPENDIX 1 Authorisation Letter from UUM COLGIS .....428

APPENDIX 2 Consent Form for Respondents to Conduct the Interview .....430

APPENDIX 3 Interview Questions to the Respondents .....433

APPENDIX 4 Respondents' Years of Experience Summary .....442

Universiti Utara Malaysia

# LIST OF LEGISLATIONS

**Malaysia**

Anti-Money-Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFAPUAA)

Federal Constitution

Interpretation Acts 1948 & 1967 (Act 388)

Malaysian Anti-Corruption Commission Act 2009 [Act 694]

Minor Offences Act 1955 (Act 336)

Penal Code (Act 574)

Regulation 10, Public Officers (Conduct & Discipline) Regulations 1993 and Service Circular No. 3 of 2002

Whistleblower Protection Act 2010 (Act 711)

Witness Protection Act 2009 (Act 696)

Bankers' Books (Evidence) Act 1949 (Act 33),

Banking and Financial Institutions Act 1989 (Act 372)

Companies Act 1965 [*Act 125*].

Statutory Declarations Act 1960 [Act 783]

Houses of Parliament (Privileges and Powers) Act 1952

Official Secret Act 1972

Code of Ethics for Members of Parliament of Government 2004 and Judges Code of Ethics 1994.

**Foreign Domestic Legislation**

Anti Money Laundering (AML*)* Law No. 80 of 2002 of Egypt

Argentina Criminal Code of 1964

Argentina Law 25.246 (also known as "AML Law")

Egyptian Criminal Procedure Code No. 150 for 1950

Egyptian Penal Code No. 58 Of 1937

Jordanian Illicit Enrichment Law No. 21 of 2014

Prevention of Bribery Ordinance (Chapter 201) (POBO) Hong Kong

Prevention of Corruption Act (Chapter 241) Singapore

Prevention of Corruption Act 1982 (Chapter 131) Brunei Darussalam.

The Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615) (AMLO) Hong Kong

The Egyptian Anti-Money Laundering (AML) Law No. 80 of 2002

The Egyptian Illicit Gain Act Law No.62 of 1975

UUM
Universiti Utara Malaysia

# LIST OF CASES

Adam Rosly Abdullah V. PP [2020] 1 LNS 2384

Attorney General for Hong Kong v. Reid and Others (1989) [1993] UKPC 2

Badrul Hisham Bin Hashim @ Ishak v Public Prosecutor (No. 2) [2020] MLJU 358

Dato' Saidin Hamby v. PP [2012] 4 CLJ 84

Ernest Percival Max Hunt v. the Queen [1974] HKCA 111

Mohammad Hafez bin Mohd Azmi v Public Prosecutor (SPRM) [2013] 7 MLJ 585

Mohd Khir bin Toyo v Public Prosecutor [2015] MLJU 513

Othman bin Arsahd v Pendakwa Raya [2019] MLJU 1333

Pendakwa Raya v Tan Sri Muhammad bin Muhammad Taib [1999] 2 MLJ 305; [1999] MLJU 123

Pendakwa Raya v Tengku Faris bin Engku Bongsu [2018] MLJU 609

PP v Abdul Rahman Harun [2014] 7 CLJ 943

Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1978] 1 MLRA 132

PP V Mohd Noor bin Rejab [2019] MLJU 1008

PP v. Yuvaraj 2 MLJ 89 PC

Public Prosecutor v Dato' Sri Mohd Najib Bin Abdul Razak [2020] MLJU 1254; [2020] 11 MLJ 808

Public Prosecutor v Datuk Haji Harun Bin Haji Idris [1977] 1 MLJ 15

Public Prosecutor v Ismail bin Mohd Azmi & another appeal [2010] 1 MLJ 108

Ramzan bin Jantan v Timbalan Ketua Polis Johor (Deputy Chief Police Officer of Johor) & Anor [2008] MLJU 111

Shahril bin Yahya v Public Prosecutor [2011] 8 MLJ 320

Spurr v United States, 174 U.S. 728, 19 S. Ct. 812, 43 L. Ed. 1150 (1899)

Tengku Adnan Bin Tengku Mansor V Public Prosecutor [2021] MLJU 2200

Universiti Utara Malaysia

# LIST OF ABBREVIATIONS

| | |
|---|---|
| 1MDB | 1 Malaysia Development Berhad |
| ABMS | Anti-Bribery Management System |
| ACI | Anti-Corruption Initiative for Asia and the Pacific |
| AD | Asset Disclosure |
| ADB | Asian Development Bank |
| ASEAN | The Association of Southeast Asian Nations |
| AU | The African Union Convention |
| AUCPCC | African Union Convention on Preventing and Combating Corruption |
| C4 | The Centre to Combat Corruption and Cronyism |
| CID | Criminal Investigation Department |
| CIP | Corporate Integrity Pledge |
| CISM | Corporate Integrity System Malaysia |
| CPI | Corruption Perceptions Index |
| CPIB | Corrupt Practices Investigation Bureau |
| CRM | Corruption Risk Management |
| DPP | Deputy Public Prosecutor |
| ECHR | European Convention on Human Rights and Fundamental Freedoms |
| ECOWAS | Economic Community Organisation of West African States |
| EU | European Union |
| GFI | Global Financial Integrity |
| GIACC | National Centre for Governance, Integrity, and Anti-Corruption |
| GO | General order |
| HKSAR | Hong Kong Special Administrative Region |

Universiti Utara Malaysia

| | |
|---|---|
| HRMIS | Human Resource Management Information System |
| IACAC | Inter-American Convention against Corruption |
| IAS | Integrity Assessment System |
| ICAC | Independent Commission against Corruption of Hong Kong |
| IE | Illicit Enrichment |
| IFF | Illicit Financial Flows |
| IIM | The Malaysian Institute of Integrity |
| IRBM | Inland Revenue Board of Malaysia |
| ISO | International Organisation for Standardization |
| JKKMAR | The Special Cabinet Committee for Anti-Corruption |
| KPI | Key Performance Index |
| MACC | Malaysian Anti-Corruption Commission |
| MPs | Members of Parliament |
| NACP | National Anti-Corruption Plan |
| NEP | New Economic Policy |
| NIP | National Integrity Plan |
| NKRA | National Key Result Area |
| OACP | Organisational Anti-Corruption Plan |
| OAS | Organisation of American States |
| OECD | Organisation for Economic Cooperation and Development |
| PDRM | The Royal Malaysian Police |
| TI-M | Transparency International-Malaysia |
| UNCAC | United Nations Convention against Corruption |

Universiti Utara Malaysia

# CHAPTER ONE

# INTRODUCTION

## 1.1 Background of the Study

Corruption hurts all countries in every region of the world.[1] Not a single nation in the world can claim to be completely free from corruption.[2] Two powerful forces that guarantee the prevalence of corruption are greed and selfishness. It is an old phenomenon in human history, with discussions on the topic covering nearly every country.[3]

The United Nations adopted the United Nations Convention against Corruption (UNCAC) in 2003, providing the basis for a truly global anti-corruption architecture and preventing corruption globally. If a country implements and enforces UNCAC, it will determine the impact and how efficient the result is for the country itself.[4] At this time, UNCAC is the most comprehensive and extensive international anti-

[1] "Corruption Perceptions Index," *Transparency International*, 2016, https://www.transparency.org/news/feature/corruption_perceptions_index_2016 (accessed April 6, 2017).
[2] Mayling Birney, "Decentralization and Veiled Corruption Under China's Rule of Mandates," *The London School of Economics and Political Science,* 53 (2014): 55–67.
[3] Axel Dreher and Thomas Herzfeld, "The Economic Costs of Corruption: A Survey and New Evidence," June (2005): 1–33.
[4] Lucinda A. Low, "The United Nations Conventions Against Corruption: The Globalization of Anticorruption Standards," in *Conference of the International Bar Association International Chamber of Commerce Organization for Economic Cooperation and Development*, vol. 2 (London, England, 2006), 1–21, https://www.steptoe.com/images/content/1/6/v1/1600/2599.pdf.

corruption convention by far compared to other international conventions.[5] Its degree comprises the requirements for criminalisation, international support in investigations and enforcement, technical assistance measures, provisions on asset recovery, and requirements on preventive measures in the public sector.[6]

According to Article 20 of the UNCAC, every state party must consider adopting legislative and other measures that are important to establish as a criminal offence, subject to the state's constitution and the fundamental principles of its legal system.[7] However, this provision is not compulsory for the state party to adopt, and it depends on the state party whether to adopt such legislation or not. Malaysia had ratified UNCAC on September 24, 2008, and enforcement started on October 24, 2008.[8]

Another initiative besides UNCAC to combat corruption globally is by measuring corruption ranking around the world. In 1995, the Corruption Perceptions Index (CPI) was initiated by Transparency International as a measuring instrument that is used to evaluate perceptions of corruption in the public sector in different countries across the world.[9] The CPI is the most commonly used global corruption ranking,

[5] Lucinda A. Low, "The United Nations Conventions Against Corruption: The Globalization of Anticorruption Standards," in *Conference of the International Bar Association International Chamber of Commerce Organization for Economic Cooperation and Development*, vol. 2 (London, England, 2006), 1–21, https://www.steptoe.com/images/content/1/6/v1/1600/2599.pdf.
[6] Ibid.
[7] United Nations, *United Nations Convention Against Corruption*, *United Nations Office on Drugs and Crime* (Vienna, 2004).
[8] United Nations, "Review of Implementation of the United Nations Convention against Corruption," in *Conference of the States Parties to the United Nations Convention against Corruption,* (2017).
[9] "Topline Report of Corruption Perceptions Index 2015," *Transparency International*, https://www.transparency.org/en/cpi/2015 (accessed July 10, 2017).

and according to experts and businesspeople, it measures the perceived level of corruption in the public sector of each country.[10]

The level of corruption in Malaysia continues to worsen,[11] as measured by the CPI. Corruption in Malaysia is an issue that requires serious attention, especially when Malaysia's CPI shows unpleasant results.[12] Corruption rankings in one aspect could reduce the possibility of investment by other potential countries. The ranking has the potential to damage a nation's reputation, even though there are some good characteristics in the ranking, they will be stigmatised or considered as countries that have corruption issues. The stigma given in the ranking can damage the reputation of a country.[13] The following chart shows Malaysia's Corruption Perceptions Index (CPI) 2022 ranking by Transparency International.

Universiti Utara Malaysia

[10] "The ABCS of the CPI: How the Corruption Perceptions Index is Calculated," *Transparency International*, https://www.transparency.org/en/news/how-cpi-scores-are-calculated (accessed December 20, 2021).
[11] "CPI Ranking Sign of Corruption Getting Worse in Malaysia," *Borneo Post Online*, http://www.theborneopost.com/2018/02/24/cpi-ranking-sign-of-corruption-getting-worse-in-malaysia-rep/ (accessed June 17, 2018).
[12] Zaleha Othman, Rohami Shafie, and Fathilatul Zakimi Abdul Hamid, "Corruption – Why Do They Do It?," *Procedia - Social and Behavioral Sciences* 164, (2014): 248–257, http://dx.doi.org/10.1016/j.sbspro.2014.11.074.
[13] Ibid.

Table 1.1 Corruption Perceptions Index 2017-2022[14]

| 2022 Rank | Country | 2022 score | 2021 score | 2020 score | 2019 score | 2018 score | 2017 score | Region |
|---|---|---|---|---|---|---|---|---|
| 1 | Denmark | 90 | 88 | 88 | 87 | 88 | 88 | Western Europe |
| 2 | Finland | 87 | 88 | 85 | 86 | 85 | 85 | Western Europe |
| 2 | New Zealand | 87 | 88 | 88 | 87 | 87 | 89 | Asia Pacific |
| 4 | Norway | 84 | 85 | 84 | 84 | 84 | 85 | Western Europe |
| 5 | Singapore | 83 | 85 | 85 | 85 | 85 | 84 | Asia Pacific |
| 5 | Sweden | 83 | 85 | 85 | 85 | 85 | 84 | Western Europe |
| 7 | Switzerland | 82 | 84 | 85 | 85 | 85 | 85 | Western Europe |
| 12 | Hong Kong | 76 | 76 | 77 | 76 | 76 | 77 | Asia Pacific |
| 61 | Jordan | 47 | 49 | 49 | 48 | 49 | 48 | Middle East and North Africa |
| 61 | Malaysia | 47 | 48 | 51 | 53 | 47 | 47 | Asia Pacific |
| 63 | Armenia | 46 | 49 | 49 | 42 | 35 | 35 | Eastern Europe and Central Asia |
| 94 | Argentina | 38 | 38 | 42 | 45 | 40 | 39 | Americas |
| 130 | Egypt | 30 | 33 | 33 | 35 | 35 | 32 | Middle East and North Africa |
| 180 | Somalia | 12 | 13 | 12 | 9 | 10 | 9 | Sub-Saharan Africa |

Table 1.1 illustrates the perception of corruption in Malaysia. A country is assessed using a scale with numbers ranging from '0' (indicating a high level of corruption) to '100' (indicating a lack of corruption), and subsequently positioned in a ranking

[14] "Corruption Perceptions Index," *Transparency International*, 2021, https://www.transparency.org/en/cpi/2021.

based on their score. A country's ranking shows its position compared to other countries in the index. Ranks change when the number of nations in the index changes.[15] In 2017, Malaysia scored 47 points, and the score remained the same in 2018. In 2019, Malaysia improved its score from 47 to 53.

However, in 2020, the situation of Malaysian corruption is not so good as the score has decreased to 51, and Malaysia continues to drop points in 2021 with a score of 48. The latest statistic from Transparency International Malaysia (TI-M) in 2022 showed that the CPI score fell to 47 points, a significant drop of 6-points over the past three years.[16] The score dropped to 47 points to rank 61 out of 180 countries, and Malaysia is now grouped among two-thirds of the countries globally that have scores below 50,[17] and marked the third year in a row that the country's position in the rankings has declined.[18] The score has fallen for the third time in a row, dropping one point from last year's report and pushing it below the 50-point mark.[19] With 47 points, CPI Malaysia's 2022, 2018, and 2017 scores were the lowest.

Universiti Utara Malaysia

[15] "What is the Corruption Perceptions Index?," *Transparency International*, 2012, https://www.transparency.org/cpi2012/in_detail (accessed July 7, 2018).
[16] Rizalman Hammim, "Malaysia Drops More Points in Global Corruption Index," *The New Straits Times*, January 31, 2023, https://www.nst.com.my/news/nation/2023/01/875201/malaysia-drops-more-points-global-corruption-index (accessed 5 May 2023).
[17] Ibid.
[18] Ahmad Naqib Idris, "Malaysia Drops Five Spots to 62 in TI-M's Corruption Index Ranking," *The Edge Markets*, 2022. https://www.theedgemarkets.com/article/malaysia-drops-five-spots-62-tims-corruption-index-rankings (accessed March 10, 2022).
[19] "Corruption Perceptions Index: Malaysia Drops Five Spots," *The Sun Daily*, 2022, https://thesun.my/local/corruption-perception-index-m-sia-drops-five-spots-FH8797421 (accessed June 6, 2022).

This drop, which is statistically significant, indicates that Malaysia is classified as a country with significant corruption issues, which negatively impacts its reputation and reflects poorly on the nation,[20] and it shows that Malaysia is heading in the wrong direction with regards to fighting corruption.[21] The countries that scored the highest under the CPI are Denmark and Finland with scores of 90 and 87 respectively, while Somalia ranks lowest with a score of 12.[22] Malaysia obtained the second-highest ranking among the ASEAN countries, following Singapore with a score of 83. Significantly, Singapore was the sole Asian country to achieve a position in the top 10, securing the fifth spot following Denmark, Finland, New Zealand, and Norway.

According to the statistics, the corruption situation in Malaysia is inconsistent, as it has been up and down in the past years. As the statistic shows how corrupt a country's public sector is perceived to be, the efforts of the Malaysian government to control corruption seem unsuccessful because the corruption level still remains high. Transparency International-Malaysia president Dr. Muhammad Mohan said, "We ought to be highly concerned about the decreasing CPI score. With the

[20] Zaleha Othman, Rohami Shafie, and Fathilatul Zakimi Abdul Hamid, "Corruption – Why Do They Do It?," *Procedia - Social and Behavioral Sciences* 164, (2014): 248–257, http://dx.doi.org/10.1016/j.sbspro.2014.11.074
[21] Rizalman Hammim, "Malaysia Drops More Points in Global Corruption Index," *The New Straits Times*, January 31, 2023, https://www.nst.com.my/news/nation/2023/01/875201/malaysia-drops-more-points-global-corruption-index (accessed 5 May 2023).
[22] "Corruption Perceptions Index," *Transparency International*, 2021, https://www.transparency.org/en/cpi/2021.

implementation of reforms, we have the opportunity to enhance our scores. As a starting point, our goal should be to score more than 50 points."[23]

Despite its poor corruption ranking, according to Transparency International, Malaysia remains committed to its goal of creating a nation free from corruption and with strong moral and ethical values. All necessary measures have been implemented, including preventive, educational, and disciplinary actions. The government has been dealing with this issue since Malaysia gained independence. The government of Malaysia took a big step in combating corruption by creating the Malaysian Anti-Corruption Commission (MACC) or previously known as the Anti-Corruption Agency, in 1967 to address corruption problems in the public and private sectors.[24]

Universiti Utara Malaysia

The Malaysian Anti-Corruption Commission Act 2009 (Act No. 694) (MACCA 2009) had been legislated to make further and better provisions to prevent corruption and for any issues that are connected to and related to corruption crimes. The fundamental function of the MACC is to eliminate corruption, misconduct, and

[23] Ahmad Naqib Idris, "Malaysia Drops Five Spots to 62 in TI-M's Corruption Index Ranking," *The Edge Markets*, 2022. https://www.theedgemarkets.com/article/malaysia-drops-five-spots-62-tims-corruption-index-rankings (accessed March 10, 2022).

[24] "Malaysian Anti-Corruption Commission," *Malaysian Anti-Corruption Commission*, http://www.sprm.gov.my/index.php/en/ (accessed June 25, 2017).

misuse of power. It operates based on the values of independence, professionalism, and transparency.[25]

Other national legal frameworks against corruption besides the MACC Act 2009 are the Anti-Money-Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFAPUAA), Penal Code (Act 574), Federal Constitution, and other related government regulations, orders, circulars, and instructions.[26] Nevertheless, despite the existence of the Acts, corruption continues to be a problem. Each day, the media highlights the increasing cases of corruption.

Whatever is inspired by the Malaysian government in combating corruption is also encouraged by Islamic practices. The Al Quran mentions the word bribery, a synonym for corruption, approximately 53 times.[27] Allah says in 2:188 of the Quran:

> *"And do not devour one another's wealth unlawfully or send it [in bribes] to the authorities so that [they could aid] you in consuming a portion of the people's wealth in sin, while you know [it is illegal]"*[28]

Universiti Utara Malaysia

[25] Malaysian Anti-Corruption Commission, "On the Road to A Corruption-Free Nation: Anti-Corruption Initiatives in Malaysia."
[26] United Nations, "Review of Implementation of the United Nations Convention against Corruption," in *Conference of the States Parties to the United Nations Convention against Corruption,* (2017).
[27] Alharbi Ali Khalaf S., *An Overview of the Saudi Arabian Criminal Justice Procedures against Corruption in the Public Sector*, Resource Material Series No. 77, n.d.
[28] "Surah Al-Baqarah [2]," *Quran.com*, https://quran.com/2. (accessed December 12, 2018).

Besides, it was narrated by Abdullah bin Amr (RA) that the Prophet Muhammad (peace be upon him) said [29] :

> *"The curse of Allah is upon both the bribe giver and the judge who accepts it, and peace be upon him, cursed not only the bribe giver, but also the bribe receiver and the one who facilitates the transaction. and peace be upon him, stated that a man's foot will not be settled on ground, until they are questioned about four matters, one of which is their source of wealth and how it has been spent.*"[30]

According to Syariah law, corruption is prohibited and is considered one of the most serious and terrible sins.[31] The aforementioned verse from the Holy Quran specifically prohibits people from engaging in corruption and bribery. The verse discusses that it is illegal to use property that is not rightfully ours or that we are not entitled to. Engaging in any unlawful means of acquiring someone else's assets, such as bribery, is strictly forbidden and considered a sin. Corruption has negative effects on both society and the country because it damages the government's well-being and overall quality of life.[32]

Universiti Utara Malaysia

[29] "Hadith Narrated by Abdullah Bin Amr," *Ahadith.Co.Uk*, https://ahadith.co.uk/hadithbynarrator.php?n=Abdullah+bin+Amr&bid=15&let=A.
[30] Aris Munandar, "*Syaria.com*," http://syaria.com/361-beware-of-the-bribe.html (accessed January 18, 2019).
[31] Alharbi Ali Khalaf S., *An Overview of the Saudi Arabian Criminal Justice Procedures against Corruption in the Public Sector*, Resource Material Series No. 77, n.d.
[32] Philip M. Nichols, "The Psychic Costs of Violating Corruption Laws," *Vanderbilt Journal of Transnational Law 45* (2012): 145–210.

The fundamental objective of Islam is to promote justice in human society[33] by forbidding bribery and corruption, as mentioned in Surah Al Baqarah and Hadith by the Prophet Mohammed (Peace Be Upon Him). Malaysian Muslims must practice what Islam teaches, which is to avoid corruption. Therefore, this study encourages researchers, scholars, and anyone else interested in corruption studies to look at the relevant Islamic teachings because Islamic teachings are a way of life and provide guidance for all aspects of life.

Besides Islam, international anti-corruption drives such as the United Nations Convention Against Corruption (UNCAC) were established to fight corruption globally, including Malaysian legislation, the MACC Act 2009. All efforts by members of society are required to prevent widespread corruption. The effort to combat corruption must involve society and actively promote public awareness of corruption, rather than relying solely on the authorised commission.[34]

One of the corruption offences that is going to be discussed thoroughly in this study is the illicit enrichment crime. Illicit enrichment or living beyond means[35] is one of the corruption offences. This crime is the result of corruption, where the abnormal growth of wealth indicates corruption.[36] This study focuses on illicit enrichment as a

[33] Akhbar Satar, *Corruption And Crime in Malaysia: Perception or Reality?*, 1st ed. (Kuala Lumpur: Akhbar & Associates, 2018).
[34] Ibid.
[35] Ibid.
[36] Nabil Mahmoud, Hasan Al-Sayed, *The Crime of Illicit Enrichment*, 1st ed. (Cairo-Egypt: Etrac for publishing, 2005).

corruption crime in Malaysia and the most crucial aspects of corruption. Illicit enrichment or unexplained wealth is "a significant increase in the assets of a public officer that he or she cannot explain in a reasonable way in regard to his or her lawful earnings." [37]

Illicit enrichment, or "unexplained wealth," is one of the corruption offences.[38] The common act of illicit enrichment and other corrupt offences were committed secretly during the performance of public office and remain unsolved or hidden due to the lack of evidence[39] and other technical errors and issues. In criminalising illicit enrichment as a new instrument, it reveals the cover of these crimes by shifting the burden of proof to the defendant or accused to prove the sources of his income whether it is from legitimate sources or otherwise.[40]

Universiti Utara Malaysia

Even though Malaysia's ratification of UNCAC demonstrates its commitment to effectively combat corruption within the country,[41] however, UNCAC does not oblige but only recommends state parties implement illicit enrichment as a criminal

[37] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).
[38] Nelly Gacheri Kamunde, "The Crime of Illicit Enrichment under International Anti-Corruption Legal Regime," *The National Council for Law Reporting*, last modified 2010, http://kenyalaw.org/kl/index.php?id=1891.
[39] Mohannad Ahmad Musa Abu-Morad, "An Analysis of the Illicit Enrichment Law and Prosecution Issues in Jordan" (PhD diss., Universiti Utara Malaysia, 2016), 30.
[40] Ibid.
[41] Sim Leoi Leoi, "Malaysia Ratifies UN Convention Against Corruption," *The Star*, 2008, http://www.thestar.com.my/news/nation/2008/09/17/malaysia-ratifies-un-convention-against-corruption/ (accessed June 15, 2017).

offence.[42] In fact, the offence of illicit enrichment is not expressly criminalised in Malaysia, as the expression of the term illicit enrichment is absence in the MACC Act 2009.[43] It is questionable whether Malaysia needs to make some improvisations to the current law of illicit enrichment as has been done by other countries such as Hong Kong, Singapore, Argentina, Egypt and any other countries.

## 1.2 Problem Statement

According to the discussion in the research background, while certain measures have been implemented to address corruption, the issue of corruption nevertheless still remains at a concerning level. In fact, Malaysia's Corruption Perception Index ranking shows that the country is getting worse every year, with 2017, 2018 and 2022 having the lowest scores recorded by Malaysia.

Universiti Utara Malaysia

The global community, in fighting corruption, encourages all countries to criminalise and legalise some acts of corruption, including illicit enrichment.[44] It is important to emphasise that, not all countries in the world have criminalised illicit enrichment under the scope of their anti-corruption legislation, so this study focuses mainly on the importance of improving the law of illicit enrichment in a way to prevent

[42] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).
[43] United Nations, "Review of Implementation of the United Nations Convention against Corruption," in *Conference of the States Parties to the United Nations Convention against Corruption,* (2013).
[44] Mesay Tsegaye Meskele, "Criminalising and Prosecuting Illicit Enrichment in Corruption Case" (University of the Western Cape (South Africa), 2019).

corruption in a comprehensive and successful way.[45] In this study, the researcher has identified two main issues of illicit enrichment in Malaysia. First, the illicit enrichment law of Malaysia is unclear, and second, there is no specific law requiring public officers to disclose their assets in Malaysia.

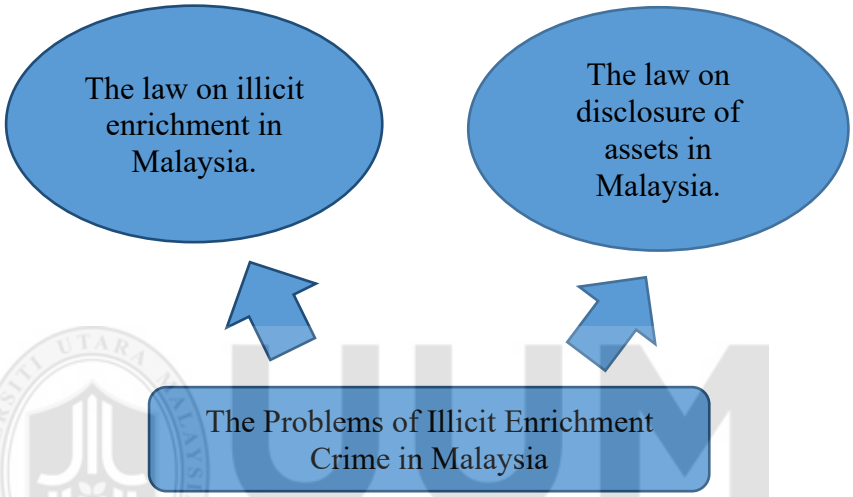



**Figure 1.2 The Problems of Illicit Enrichment Crime in Malaysia**

1.2.1 The law on illicit enrichment crime in Malaysia.

Illicit enrichment (IE) is described as an offence in the United Nations Convention Against Corruption, the Inter-American Convention against Corruption and the African Union Convention on Preventing and Combating Corruption, therefore,

[45] Mesay Tsegaye Meskele, "Criminalising and Prosecuting Illicit Enrichment in Corruption Case" (University of the Western Cape (South Africa), 2019).

several countries have incorporated illicit enrichment as a criminal offence into their legal framework to strengthen their capacity to combat corruption.[46]

Illicit enrichment is defined in Article 20 of the United Nations Convention Against Corruption (UNCAC) as:

> *"A crime that shows a significant increase in the assets of a public official, which he or she cannot reasonably explain in relation to his or her lawful income and it is committed intentionally."*

The definition of illicit enrichment includes the key elements that constitute the crime itself. The term "illicit enrichment" refers to the earnings from corruption crimes that have been committed during a period of service.[47] The criminal acts that may lead to illicit enrichment often involve a significant accumulation of unexplained wealth through illegal or unethical means. The crime includes bribery and corruption, money laundering, embezzlement, misappropriating public funds or resources for personal gain, abuse of power, and many others.[48] These actions have the potential to allow public officials to accumulate wealth that exceeds their legal income, which serves as the foundation for allegations of illicit enrichment. [49]

Universiti Utara Malaysia

[46] *Comparative Overview: Criminalisation of Illicit Enrichment of Public Officials in Certain European Countries,* Parliament of Montenegro, Parliamentary Institute Research Centre, (Podgorica, Montenegro, 2016).
[47] Mohannad Ahmad Abu-Morad, Zainal Amin Ayub, and Fauziah Mohammad Noor, "The Law on the Illicit Enrichment Crime and Financial Disclosure in Jordan: Issue of Effectiveness and Enforceability," *The Journal of Social Sciences Research* 2, no. 5 (2016).
[48] Ibid.
[49] Akhbar Satar, *Corruption And Crime in Malaysia: Perception or Reality?*, 1st ed. (Kuala Lumpur: Akhbar & Associates, 2018), 31.

The main characteristic of this crime is its secretive nature, and the concept of illicit enrichment or unexplained wealth first emerged as an offence when dealing with corrupt public officers, even in the absence of direct evidence of bribery.[50]

Illicit enrichment is considered a corruption offence,[51] however, the MACC Act 2009 in Malaysia does not include a specific provision for illicit enrichment, nor is the term "illicit enrichment" explicitly referenced in Section 36.[52] Although it is treated as an offence, the definition of illicit enrichment remains unclear, as it has not been directly criminalised under current Malaysian law. [53]

The definition of illicit enrichment does not fall within the scope of "gratification" as defined in Section 3 of the MACC Act.[54] Furthermore, the elements of illicit enrichment are not covered by the Act's main predicate offences of corruption, which are specified in Sections 16,[55] 17,[56] 18 [57] and 23.[58] These are the four sections that are the pillars of the MACC Act 2009, and the main predicate offences of

Universiti Utara Malaysia

[50] Akhbar Satar, *Corruption and Crime in Malaysia: Perception or Reality?*, 1st ed. (Kuala Lumpur: Akhbar & Associates, 2018), 31.
[51] Mesay Tsegaye Meskele, "The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law," (master's thesis, Faculty of Law, University of the Western Cape, South Africa, 2012), 30.
[52] Cynthia Gabriel, "For Tracking Unexplained Wealth, C4 Recommends Tightening of MACC Act," *Malaysia Kini*, 2017, https://www.malaysiakini.com/letters/379694 (accessed June 15, 2018).
[53] Cynthia Gabriel, "For Tracking Unexplained Wealth, C4 Recommends Tightening of MACC Act," *Malaysia Kini*, 2017, https://www.malaysiakini.com/letters/379694 (accessed June 15, 2018).
[54] Please refer to the definition of gratification in Subtopic 2.1.1 in Chapter 2.
[55] Section 16: Offence of accepting gratification of the MACCA 2009
[56] Section 17: Offence of giving or accepting gratification by agent of the MACCA 2009
[57] Section 18: Offence of intending to deceive principal by agent of the MACCA 2009
[58] Section 23: Offence of using office or position for gratification of the MACCA 2009, Malaysian Anti - Corruption Commission (MACC), *Malaysian Anti-Corruption Commission Annual Report 2020*, 2020.

bribery under the MACCA.[59] Due to the loose provisions and unclear elements of illicit enrichment in Section 36, challenges arise in prosecuting related cases, as discussed further below.

Illicit enrichment originates from the proceeds of a crime, or something related to it, and since Section 36 did not specify it as an offence,[60] the legal framework for IE encounters several challenges and issues. The section only prescribes the investigation and punishment for a crime of illicit enrichment, which authorises the MACC with the authority to obtain information regarding any property owned or acquired by a person. However, the power is limited in its reach as it has to be connected with a crime, as stated in the MACC Act.[61] Besides, Section 36 does not state any matter relating to possessing unusual or unexplained wealth as an offence, as it only authorises MACC to inspect possession of any property if it is related to any offence stated under the MACC Act. This somehow limits the power of the MACC officer to completely investigate issues in connection with corruption.[62] Besides, the possession of unusual wealth was also not covered under the penal code or any other legislation in Malaysia.[63]

Universiti Utara Malaysia

[59] "Types of Offences of Corruption," *Malaysian Anti-Corruption Commission Act 2009*, https://www.sprm.gov.my/index.php?page_id=75&articleid=481&language=en (accessed July 5, 2023). & these four predicate offences are further discussed at page 140.
[60] Ibid.
[61] Ibid.
[62] "Types of Offences of Corruption," *Malaysian Anti-Corruption Commission Act 2009*, https://www.sprm.gov.my/index.php?page_id=75&articleid=481&language=en (accessed July 5, 2023). & please refer to the findings 4.1 in chapter four for a further discussion on the weaknesses, issues, and challenges of section 36.
[63] Cynthia Gabriel, "For Tracking Unexplained Wealth, C4 Recommends Tightening of MACC Act," *Malaysia Kini*, 2017, https://www.malaysiakini.com/letters/379694 (accessed June 15, 2018).

Since the MACC Act lacks a clear and specific provision for illicit enrichment,[64] cases involving IE or similar circumstances are instead prosecuted under the MACC Act's general provisions or alternative legislation, such as the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) (AMLATFPUAA),[65] the Penal Code, the Forfeiture of Property, the Minor Offences Act 1955 (Act 336), and other related laws and regulations. These provisions serve as alternative legal options when the prosecution cannot charge or substantiate direct evidence of bribery against the accused, as the current laws governing illicit enrichment are insufficient.

Typical corruption cases under the predicate offences in the MACC Act are charged when there is direct evidence of bribery, and they can be prosecuted under the four main predicate offences as previously mentioned. In Malaysia, however, cases related to illicit enrichment[66] often lack direct proof that unexplained wealth was obtained through corruption (under these main predicate offences). Consequently, if the prosecution is unable to establish the illicit enrichment case through these specific offences, the court is likely to acquit the defendant[67] or charge him under other alternative provisions[68] as mentioned above.

Universiti Utara Malaysia

[64] Cynthia Gabriel, "For Tracking Unexplained Wealth, C4 Recommends Tightening of MACC Act," *Malaysia Kini*, 2017, https://www.malaysiakini.com/letters/379694 (accessed June 15, 2018).
[65] Adam Rosly Abdullah V. PP [2020] 1 LNS 2384
[66] PP v Abdul Rahman Harun [2014] 7 CLJ 943
[67] Please refer to the case of PP v Abdul Rahman Harun [2014] 7 CLJ 943 and findings in chapter 4.
[68] Adam Rosly Abdullah V. PP [2020] 1 LNS 2384 & PP v. Mohd Noor bin Rejab [2019] MLJU 1008

Furthermore, as there are certain unclear elements of illicit enrichment, the prosecution encountered challenges in cases of illicit enrichment when charging under the MACC or other laws because some cases are difficult to prove due to the definition of "gratification" under the MACC does not include the element of illicit enrichment.[69]

Although the United Nations Convention Against Corruption (UNCAC) encourages countries to criminalise illicit enrichment, this approach is not universally accepted as an anti-corruption measure,[70] including in Malaysia. Illicit enrichment is a relatively new issue in Malaysia, which is why there is currently no specific offence for criminalising illicit enrichment or possession of unexplained wealth. Previously, according to Malaysia's Country Review Report by the United Nations Convention Against Corruption in 2013, no cases of illicit enrichment had been reported in the courts.[71] This demonstrates the uncertainty of Section 36 of the MACC Act. Previously, the application of Section 36 was not widely expanded, resulting in most IE-related cases being reported only by the media, newspapers, and the MACC. It is only recently that cases related to illicit enrichment and those under Section 36 have been reported in the courts, with cases occurring in 2014,[72] 2019,[73] and 2020,[74] after

[69] Please refer to the definition of gratification in Subtopic 2.1.1 in Chapter 2.
[70] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).
[71] United Nations Convention against Corruption, Country Review Report of Malaysia, 2013.
[72] PP v. Abdul Rahman Harun [2014] 7 CLJ 943
[73] PP v. Mohd Noor bin Rejab, [2019] MLJU 1008
[74] Adam Rosly Abdullah V. PP [2020] 1 LNS 2384 & Public Prosecutor v Dato' Sri Mohd Najib Bin Abdul Razak [2020] MLJU 1254; [2020] 11 MLJ 808

the UN Country Review Report was published. The cases reported in newspapers are discussed below, while IE-related cases are addressed in Chapter 4 of the Findings section.

In November 2020, six individuals, consisting of three immigration officials and three more agents, were arrested on suspicion of conspiring with a people-smuggling syndicate. In addition to the arrests, authorities seized a Rolls-Royce limousine, a Ford Mustang, a Range Rover, and an Audi. According to a source from the Malaysian Anti-Corruption Commission (MACC), the cars were officially registered under the names of two Chinese individuals who are believed to be involved in the illegal practice of working as employment brokers for their fellow countrymen, together with two local agents. 50 individuals have been arrested by the Malaysian Anti-Corruption Commission (MACC) as part of Operation Selat. This operation focuses on the false modification of entry stamps to illegally enter the country's borders.[75] The individuals who have been arrested consist of 28 immigration officers holding different positions, 17 agents, and five more individuals. According to the source, the MACC investigators have seized a total of RM800,000 in cash, 26 luxury automobiles, four high-performance motorcycles, and various properties, including residences, land, jewellery, designer handbags, and other items.[76] The immigration

[75] Justin Ong, "MACC Nabs Three More Immigration Officers, Seizes Luxury Cars including Rolls-Royce Over Ties to People-Smuggling Ring," *The Malay Mail*, 2020, https://www.malaymail.com/news/malaysia/2020/11/20/macc-nabs-three-more-immigration-officers-seizes-luxury-cars-including-roll/1924565 (accessed September 10, 2020).

[76] Justin Ong, "MACC Nabs Three More Immigration Officers, Seizes Luxury Cars including Rolls-Royce Over Ties to People-Smuggling Ring," *The Malay Mail*, 2020,

officer in question is believed to have connections to a people-smuggling network and is reportedly associated with criminal activities and affiliations with secret societies. According to reports, the suspect allegedly engaged in ongoing criminal behaviour while working in a public official capacity.[77] Ops Selat is a collaborative operation involving multiple agencies that has conducted raids in Johor Baru, Putrajaya, Kuching and Kota Kinabalu. The purpose of these raids is to investigate the suspected connection between immigration staff and crime syndicates.[78] The immigration officer holds the KP19 grade, which offers a salary range of RM1,360 to RM4,052, excluding allowances, and lives beyond their means. Living within your means is sound advice for anyone, but perhaps more so if you are going to run afoul of the law.[79] In December 2020, five immigration officers were found guilty under Section 165 of the Penal Code and Section 25(1) of the MACC Act 2009. The Sessions Court sentenced them to prison terms ranging from 30 days to 12 months, and fines between RM2,000 and RM40,000.[80]

Universiti Utara Malaysia

https://www.malaymail.com/news/malaysia/2020/11/20/macc-nabs-three-more-immigration-officers-seizes-luxury-cars-including-roll/1924565 (accessed September 10, 2020).

[77] R. Loheswar, "Report: Supposedly Rolls-Royce Owning Immigration Officer has Criminal Record, Secret Society Ties," *The Malay Mail,* 2020. https://www.malaymail.com/news/malaysia/2020/11/24/report-supposedly-rolls-royce-owning-immigration-officer-has-criminal-recor/1925512 (accessed October 5, 2021).

[78] Justin Ong, "MACC Nabs Three More Immigration Officers, Seizes Luxury Cars including Rolls-Royce Over Ties to People-Smuggling Ring," *The Malay Mail*, 2020, https://www.malaymail.com/news/malaysia/2020/11/20/macc-nabs-three-more-immigration-officers-seizes-luxury-cars-including-roll/1924565 (accessed September 10, 2020).

[79] Mazwin Nik Anis, "Low-Ranking Officer Owns Rolls Royce," *The Star*, November 2020, https://www.thestar.com.my/news/nation/2020/11/21/low-ranking-officer-owns-rolls-royce

[80] "OP Selat (Insolence of Foreigners)," *Malaysian Anti-Corruption Commission,* https://www.sprm.gov.my/index.php?page_id=103&contentid=2871&cat=TOC&language=my (accessed June 5, 2023)

Besides, according to the 2017 Star Online, they reported that government workers and officers have been living beyond their means. There are situations in which lower-ranking government clerks and lower-ranking officers are able to buy expensive items and drive luxurious automobiles. Their extravagant lifestyle is incompatible with their minimal income as administrative assistants and young officers under the government's wages. Younger public officers were more susceptible to engaging in corrupt practices as a means to satisfy their materialistic needs and demands.[81]

In addition, the New Straits Times reported another case of illicit enrichment on August 16, 2016. The Malaysian Anti-Corruption Commission (MACC) detained three senior public officers on suspicion of corruption. Accordingly, each of them had connections with Kuala Lumpur City Hall (DBKL), the Public Works Department (JKR), and Tenaga Nasional Berhad (TNB). Each of them was alleged to have significant wealth, with assets valued in the millions of ringgits, including cash, unit trusts, upscale residences such as bungalows and penthouses, as well as luxury vehicles such as BMW, Maserati, and AUDI. These assets are suspected to have derived from corruption, money laundering, and abuse of power. [82]

Universiti Utara Malaysia

[81] Mazwin Nik Anis, "Low-Ranking Officer Owns Rolls Royce," *The Star*, November 2020, https://www.thestar.com.my/news/nation/2020/11/21/low-ranking-officer-owns-rolls-royce

[82] "MACC Finalising Ips on Three Senior Govt Officers," *New Straits Times*, https://www.nst.com.my/news/2016/08/169170/macc-finalising-ips-three-senior-govt-officers. (accessed June 15, 2016).

Moreover, the case of living beyond means or unexplained wealth can be seen in the 2018 Malaysia Development Berhad (1MDB) scandal involving Datuk Seri Najib Razak, the former prime minister of Malaysia.[83] During his tenure, Datuk Seri Najib Razak emphasised the need to combat corruption among Malaysians in order to enhance the country's position in Transparency International's Corruption Perceptions Index.[84] Regrettably, he is currently facing allegations of corruption. In May 2018, the Royal Malaysian Police (PDRM) confiscated high-value items from accommodation linked to Datuk Seri Najib Razak in the course of an investigation into 1MDB, which was valued at approximately RM1.1 billion. The seized items include cash, jewellery, handbags, branded watches, and designer sunglasses.[85] The confiscation of valuable items and currency equivalent to RM1.1 billion from the former prime minister's residences triggers questions, particularly among Malaysian citizens. With his income, it would have taken him almost a hundred years to accumulate such wealth.

In July 2020, Najib Razak was convicted of corruption in relation to the massive 1MDB scandal, which included billions of dollars. The High Court has sentenced the former prime minister, who was found guilty on all counts in his initial trial, to twelve years in prison and a fine of RM210 million, with an additional five years in

[83] Public Prosecutor v Dato' Sri Mohd Najib Bin Abdul Razak [2020] MLJU 1254; [2020] 11 MLJ 808
[84] "Corruption in Malaysia: Perception vs Reality," *Malaysian Digest*, 2014, http://malaysiandigest.com/.../282.../534261-corruption-in-malaysia-perception-vs-reality.html.
[85] Kalbana Perimbanayagam and Mohd Azam Shah Yaacob, "Police: Total Value of Seized Items in 1MDB Probe around RM1.1B," *New Straits Times*, 2018, https://www.nst.com.my/news/crime-courts/2018/06/384569/police-total-value-seized-items-1mdb-probe-around-rm11b.

prison served as a default.[86] The court convicting Najib on all seven charges and sentencing him to 12 years' jail and a fine of RM210m (in default five years' jail) on the MACC charge and ten years' jail on each of the three criminal breach of trust charges and each of the three money-laundering charges under the AMLATFPUAA; ordering the custodial sentences to run concurrently and granting a stay of execution of the sentences (both of jail and fine).[87] On August 2022, the Federal Court upheld Najib Razak's conviction and sentence related to a multi-billion dollar graft scandal at 1MDB.[88] He became the first Malaysian prime minister to ever serve a 12-year prison sentence after losing his final appeal.[89]

The Centre to Combat Corruption and Cronyism (C4)[90] calls for a revision of the MACC Act to enhance the investigative authority of the Malaysian Anti-Corruption Commission (MACC), particularly in matters related to unexplained wealth or possession of unusual or unexplained wealth.[91] This is due to the detention and remand of PKR Youth Chief Adam Rosly in 2017 to assist investigations into accusations of his "unusual wealth." Nonetheless, C4 stated that he was being investigated under the AMLATFAPUAA, not the MACC Act. This is due to some

[86] "Najib gets Concurrent 12-year Jail Sentence, RM210 million Fine," *The Star*, 2020, https://www.thestar.com.my/news/nation/2020/07/28/najibs-src-trial-live-updates.
[87] Public Prosecutor v Dato' Sri Mohd Najib Bin Abdul Razak [2020] MLJU 1254; [2020] 11 MLJ 808
[88] Rozanna Latiff, "Malaysian ex-PM Najib goes to Jail for Graft after Losing Final Appeal," *Reuters*, 2022, https://www.reuters.com/world/asia-pacific/malaysias-ex-pm-najib-arrives-top-court-final-leg-1mdb-appeal-2022-08-23/.
[89] Ibid.
[90] The Center to Combat Corruption and Cronyism (C4 Center) is an independent non-profit policy advocacy group dedicated to fighting corruption and upholding good governance in Malaysia.
[91] "C4: Amend MACC Act to Probe 'Unusual' Wealth," *FMT Reporters*, https://www.freemalaysiatoday.com/category/nation/2017/04/19/c4-amend-macc-act-to-probe-unusual-wealth/. (accessed December 12, 2017).

limitations in Section 36 of the MACC Act itself as it does not criminalise possessing unusual or unexplained wealth as a crime, but Section 36 authorises MACC to get information in connection with any property held or acquired by any person, however, the power is restricted as it has to be connected with any offence under the MACC Act.[92]

The circumstances surrounding the 1MDB cases, including the junior officers and public officers with lower ranks who live a flashy lifestyle, as well as the higher-ranking officers who have acquired wealth beyond their means, demonstrate that the problem of living beyond means and illicit enrichment is outgrowing Malaysia. Living beyond means first existed as an offence in dealing with corrupt public officers when there was an absence of direct evidence of bribery against them.[93] The government's anti-corruption measures are proving to be ineffective in light of the increasing cases of illicit enrichment. Therefore, more needs to be done to prevent corruption and illicit enrichment in the public sector.

1.2.2 The law on disclosure of assets in Malaysia.

Financial disclosure, or asset declaration, is an exposure of a public officer's legitimate income or emolument. An asset declaration system was designed specifically to provide a transparent mechanism for public officers to disclose their assets and financial interests. The system additionally provides a means for verifying

[92] Cynthia Gabriel, "For Tracking Unexplained Wealth, C4 Recommends Tightening of MACC Act," *Malaysia Kini*, 2017, https://www.malaysiakini.com/letters/379694 (accessed June 15, 2018).
[93] Akhbar Satar, *Corruption And Crime in Malaysia: Perception or Reality?*, 1st ed. (Kuala Lumpur: Akhbar & Associates, 2018). 31.

and prosecuting mechanisms of non-compliance or illicit enrichment by public officers. The system can be used to fight corruption since it serves as a mechanism to prevent a situation where public officers have conflicting interests.[94]

Another effort that the Malaysian government must take to prevent illicit enrichment is by enforcing asset declarations among public officers. Asset declaration is important to curb corruption and detect illicit enrichment.[95]

The basic characteristic of corruption is that it is done in secret, which makes it hard to detect and investigate. The secretive nature of illicit enrichment makes it a complicated and argumentative crime. Hence, a well-designed and structured asset declaration system can serve as a tool to detect public officers' wealth and effectively prevent illicit enrichment. If the wealth or property in the hands of public officers and their families exceeds their legal income, it would be easy to notice, investigate, and prosecute.[96] The challenges in acquiring proof to show the elements of corruption and other interrelated acts of bribery require investigating the criminalisation of a significant increase in the assets of public officials.[97]

Universiti Utara Malaysia

[94] Akhbar Satar, *Corruption And Crime in Malaysia: Perception or Reality?*, 1st ed. (Kuala Lumpur: Akhbar & Associates, 2018). 31.
[95] Shamshun Baharin Mohd Jamil, *Asset Declaration in Malaysia*, 2018.
[96] Mesay Tsegaye Meskele, "Criminalising and Prosecuting Illicit Enrichment in Corruption Case" (University of the Western Cape (South Africa), 2019).
[97] Ibid.

Asset declaration by public officers is necessary as one of the preventive instruments to combat corruption. This preventive instrument has been acknowledged by UNCAC.[98] According to UNCAC, state parties are required to adopt legislation that requires public officers to declare their outside activities, investments, employment, gifts, donations, or profits, which may result in a conflict of interest. These declarations are required to be made upon assuming office, throughout, and after the term of their public service.[99]

The asset declaration system can be used to fight corruption because it is a tool that can prevent a conflict of interest among public officers. Under some circumstances, asset disclosure can help enforcement authorities identify and prosecute public officers who gained wealth through the abuse of their position and power. Detection and inquiry can expose bribes and other forms of corruption, such as nepotism, extortion, conflicts of interest, and undue advantage.[100]

Although Malaysia has made some progress in implementing the asset declaration system, it needs to be more comprehensive, as it currently falls short of international guidelines. The failure to declare assets is only subject to disciplinary action or a code of ethics.[101] Malaysia's legal framework for asset declaration, primarily

[98] Mesay Tsegaye Meskele, "Criminalising and Prosecuting Illicit Enrichment in Corruption Case" (University of the Western Cape (South Africa), 2019).
[99] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[100] Chin Chin Hong, "Reforming the System of Asset Declaration in Malaysia as a Strategy to Combat Corruption" (master's thesis, International Anti-Corruption Academy (IACA), 2016).
[101] Shamshun Baharin Mohd Jamil, *Asset Declaration in Malaysia*, 2018.

governed by codes of conduct and regulations, does not fully align with international standards.[102] International best practices generally advocate for specific, stand-alone legislation that mandates asset and income declarations, establishes independent verification mechanisms, and enforces penalties for non-compliance. Countries with stronger anti-corruption frameworks typically have dedicated laws that require detailed declarations and active monitoring, particularly for high-risk public officials, to effectively detect and address illicit enrichment.[103]

The code of ethics itself is not enough to punish those who did not comply with the asset declaration. When there is no law to oblige by public officers, no action can be taken against them. As of now, no clear punishment could be imposed against public officers who did not declare their assets. MACC deputy chief commissioner Shamshun Baharin Mohd Jamil said that, as there was no specific law on the declaration of assets, the commission could not verify the declaration documents that they received.[104]

In 2021, Transparency International Malaysia has advocated for the introduction and approval of a Parliamentary Asset Declaration Act, which would require all senators, elected officials, and politicians to disclose their assets and those holding positions of

[102] Chin Chin Hong, "Reforming the System of Asset Declaration in Malaysia as a Strategy to Combat Corruption" (master's thesis, International Anti-Corruption Academy (IACA), 2016).
[103] Ibid.
[104] "Asset Declaration Law Needed for Greater Transparency," *Free Malaysia Today*, 2021, https://www.freemalaysiatoday.com/category/nation/2021/07/19/asset-declaration-law-needed-for-greater-transparency-says-ti-m/.

power, to declare their assets, incomes and other relevant financial information,[105] to ensure good governance and eradicate corruption.[106] Enacting the Parliamentary Asset Declaration Act will encourage enhanced transparency and eradicate corruption inside public office.[107]

The existing asset declaration framework in Malaysia that applies to public officers by way of government regulations, is provided under Malaysia's Regulation 10, Public Officers (Conduct & Discipline) Regulations 1993 and Service Circular No. 3 of 2002. The regulation reads as follows:

> *"Upon being appointed to the public service or as requested by the government, an officer must submit a written declaration to the relevant disciplinary authority or department heads regarding any property owned by them, their spouse, or child, or any property held by someone on their behalf or on behalf of their spouse or child."*

Universiti Utara Malaysia

The submission of a list of assets on a 5-year basis or every time new assets are obtained is mandatory under this regular or circular,[108] and only applies to public

[105] Jerry Choong, "Transparency International Malaysia Calls for Legislation Mandating Asset Declaration by Politicians," *The Malay Mail*, 2021, https://www.malaymail.com/news/malaysia/2021/07/19/transparency-international-malaysia-calls-for-legislation-mandating-asset-d/1991079.
[106] Fuad Nizam, "Wealth of Those in Power Should be Made Transparent with Asset Declaration Act," *The New Straits Times,* 2023, https://www.nst.com.my/news/nation/2023/04/900822/wealth-those-power-should-be-made-transparent-asset-declaration-act.
[107] "Asset Declaration Law Needed for Greater Transparency," *Free Malaysia Today*, 2021, https://www.freemalaysiatoday.com/category/nation/2021/07/19/asset-declaration-law-needed-for-greater-transparency-says-ti-m/.
[108] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.

officers by way of government regulations.[109] The system lacks comprehensiveness and fails to meet international standards.[110] All public officers need to make declarations in relation to any property,[111] whether it is movable or immovable.

Public officers must disclose their assets on the Public Service Human Resource Management Information System (HRMIS), which is the designated website for this purpose. The regulation[112] provides that failure to comply can result in disciplinary actions for the officer, including demotion, salary reduction, or dismissal. The absence of a criminal provision for public officers who fail to declare their assets has significantly weakened the effectiveness of the system. In fact, HRMIS is not a proper system and needs to be further strengthened. [113]

The submission of asset declarations to the HRMIS has become nothing more than window dressing. A public officer may face an administrative penalty, such as issuing a warning letter, if their respective department catches them for noncompliance or having unexplained wealth.[114]

Universiti Utara Malaysia

[109] Chin Chin Hong, "Reforming the System of Asset Declaration in Malaysia as a Strategy to Combat Corruption" (master's thesis, International Anti-Corruption Academy (IACA), 2016).
[110] Ibid.
[111] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[112] Regulation 10, Public Officers (Conduct & Discipline) Regulations 1993 and Service Circular No. 3 of 2002
[113] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[114] Chin Chin Hong, "Reforming the System of Asset Declaration in Malaysia as a Strategy to Combat Corruption" (master's thesis, International Anti-Corruption Academy (IACA), 2016).

In 2019, the Dewan Rakyat unanimously passed a motion requiring all Members of Parliament to disclose their assets to the Speaker of the Dewan Rakyat, with a copy provided to the MACC. The MACC serves as the custodian of the information in this situation. The Commission will publish it on the Asset Declaration Portal within three months of the declaration.[115] This new policy is made accessible to the public on the MACC website.[116]

A comprehensive asset declaration law is important in presenting a main instrument in a way to track the wealth status of public officers and to prevent conflict of interest and illicit enrichment.[117] Besides, Transparency International Malaysia, the Malaysian Bar Council and the C4 Centre have voiced their opinions and expressed their support for the amendment of the law to give MACC more authorities to investigate those alleged to be living beyond their means. Many cases and incidents have involved elected and public officers with unexplained wealth, highlighting the importance of implementing an effective asset declaration system. An effective asset declaration system will strengthen Malaysian people's and foreign investors' confidence in the government's honesty, accountability, and good governance.[118]

Universiti Utara Malaysia

[115] "MACC Recommends Act for Mandatory Asset Declaration," *Malaysia Kini*, 2021, https://www.malaysiakini.com/news/582969?login_method=google.
[116] "The Assets Declaration Portal can be Access Today," *The Malaysian Anti-Corruption Commission*, July 2020,https://www.sprm.gov.my/index.php?page_id=105&contentid=503&language=en **&** "The Asset Declaration Portal," *Malaysian Anti-Corruption Commission,* https://mydeclaration.sprm.gov.my/
[117] Cynthia Gabriel, "For Tracking Unexplained Wealth, C4 Recommends Tightening of MACC Act," *Malaysia Kini*, 2017, https://www.malaysiakini.com/letters/379694 (accessed June 15, 2018).
[118] Chin Chin Hong, "Reforming the System of Asset Declaration in Malaysia as a Strategy to Combat Corruption" (master's thesis, International Anti-Corruption Academy (IACA), 2016).

The two issues in the problem statement show how important it is to study the law of illicit enrichment and asset declaration as preventive measures to fight corruption in Malaysia. Illicit enrichment is no longer a new issue because it is one of the corruption offences that has been committed for so long and has been recognised by many countries. Besides, asset declaration regulations and illicit enrichment laws are considered effective tools for fighting corruption and promoting democratic values like accountability and transparency.

## 1.3 Research Questions

1.3.1 What are the laws on illicit enrichment that are enforced to eradicate the problem of corruption in Malaysia?

1.3.2 How can the rules pertaining to the asset declaration system prevent the problem of illicit enrichment?

1.3.3 Which regulatory legal frameworks for illicit enrichment from other countries should Malaysia use as a reference?

1.3.4 How to improve the law on illicit enrichment for the prevention of corruption?

Universiti Utara Malaysia

## 1.4 Research Objectives

1.4.1 To study the laws on illicit enrichment that are enforced to eradicate the problem of corruption in Malaysia.

1.4.2 To analyse the rules pertaining to the asset declaration system that can prevent the problem of illicit enrichment.

1.4.3 To examine the regulatory legal frameworks for illicit enrichment from other countries that should be used as a reference for Malaysia.

1.4.4 To recommend improvements to the illicit enrichment law for the prevention of corruption.

## 1.5 Significance of The Study

This study is likely to be the first in-depth legal research in Malaysia, examining the illicit enrichment law with references to the country's corruption laws. This study aims to discover the inadequacies in the laws on illicit enrichment and the asset declaration system in governing the problem of corruption and illicit enrichment in Malaysia.

Besides, this study seeks to examine the relevant questions that appear during the discussion of the amendment to the illicit enrichment regulation, which is Section 36 of the MACC Act, and to consider the advantages and disadvantages of such a provision.

This study will be useful as an academic source for researchers, practitioners, academicians, and students, and it will provide policymakers, lawmakers, and other practitioners with a better understanding of the characteristics of illicit enrichment. Furthermore, it will serve as a guide for legislators looking to address the issue of corruption in Malaysia.

It is hoped that when this study is complete, it will have good academic value and will positively contribute to the body of new knowledge,[119] in the areas of criminal law, anti-corruption studies, legislative studies and bodies, public administration and governance, legal reform and policy development, by using the qualitative methodology adopted by the researcher. Through asking the right questions to the respondents and doing a thorough data analysis, it is hoped that this study will make a significant contribution to enhancing efficiency of Section 36 of the MACCA, consequently helping to reduce corruption rates, particularly those related to illicit enrichment crimes. This study will lay the legal groundwork and draw a clear road map for decision-makers and legislators, which accordingly allows them to review the current anti-corruption law and overcome the legal gap.

For instance, the findings and recommendations of this study will be utilised as a basis of information by the academic community who are concerned with the area of corruption and illicit enrichment crime, and this study will answer many calls made

[119] Anwarul Yaqin, *Legal Research and Writing* (Kelana Jaya: Malayan Law Journal Sdn Bhd, 2007). 131.



Universiti Utara Malaysia

for more intensive research on the illicit enrichment issues and asset declaration systems of developing countries, especially in Malaysia.

## 1.6 Research Methodology

This study adopts social legal research as a research methodology. The theoretical framework of this research is based on two methodological approaches: a doctrinal approach and qualitative methodology, which are further discussed under Research Design. Research methodology refers to the process by which a researcher gathers sufficient data to carry out the intended study.[120] Meanwhile, methodology includes the approach implemented by a researcher in carrying out their study, as well as the underlying logic, justifications, or rationale behind these strategies.[121]

This thesis divides the discussion of research methodology into six (6) parts: research design, research scope, types of data, sampling and selection, and data analysis.

### 1.6.1 Research Design

This research design adopts doctrinal research methodology. Doctrinal research, also known as pure legal, academic, traditional, or conventional research, is essentially a library-based study in which the researchers obtain the necessary resources from libraries, archives, and other databases. The main objective of this research is to

[120] Anwarul Yaqin, *Legal Research and Writing* (Kelana Jaya: Malayan Law Journal Sdn Bhd, 2007). 131.
[121] Ibid.

systematically discover, explain, investigate, analyse, and provide facts, principles, provisions, concepts, theories, or the functioning of specific laws or legal institutions.[122]

The main concern in doctrinal legal research is the construction of legal principles through the analysis of lawful guidelines. Inside the common law authorities, legal rules are found within statutes and cases (the sources of law).[123] Mostly, this type of legal research is carried out only by judges, lawyers, law teachers, and legal research scholars.[124]

In addition, this research employs a qualitative methodology. In a qualitative study, the researcher used interviewing as a means of gathering data. An individual with knowledge and experience in corruption and crime can provide information during an interview.[125] The main aim of interviewing is to ascertain opinions and perspectives, as well as to collect data in the form of words, descriptions, or narratives.[126] Furthermore, the qualitative legal research utilised in this study serves as a supportive method to achieve the study's findings.

Universiti Utara Malaysia

[122] Paul Chynoweth, *Advanced Research Methods in the Built Environment: Chapter Three Legal Research* (Blackwell Publishing Ltd, 2008).
[123] Ibid.
[124] Vijay M Gawas, "Doctrinal Legal Research Method: A Guiding Principle in Reforming the Law and Legal System towards The Research Development," *International Journal of Law* 3, no. 5 (2017): 128–130.
[125] Anwarul Yaqin, *Legal Research and Writing* (Kelana Jaya: Malayan Law Journal Sdn Bhd, 2007). 129.
[126] Puvenesvary Muthiah, "Interviews," in *Qualitative Research : Data Collection and Data Analysis Techniques*, 2nd ed. (Sintok, Kedah: UUM Press, 2011).

The researcher conducted this study as a semi-structured interview, selecting a few topics of concern related to corruption, illicit enrichment, and asset declaration, and following certain guidelines. The researcher asked the respondents to freely discuss each topic, a process known as a guided or focused interview. This kind of interview is more formal than a completely unstructured interview.[127] Semi-structured questions are normally preceded by opinion and informal and unstructured interviewing so as to enable the researchers to build up a deep understanding of the topic of interest needed to develop significant and important semi-structured questions.[128]

One of the advantages of using semi-structured interviews by many researchers is that questions can be developed early. This authorises the interviewer to be equipped and act proficiently during the interview,[129] and it also empowers the respondents to express their opinions and viewpoints independently as they receive the interview questions ahead of time. From interviews, the researcher can gain a deep understanding of the situation regarding corruption, illicit enrichment, and asset declaration issues that are happening nowadays.

Universiti Utara Malaysia

[127] William C. Adams, *Conducting Semi-Structured Interviews,* in Handbook of Practical Program Evaluation, 4th ed. 2015.
[128] D. Cohen, and Crabtree Bernard, "*Qualitative Research Guidelines Project*," 2006, http://www.qualres.org/HomeSemi-3629.html.
[129] Ibid.

The researcher herself creates the initial interview questions based on the research questions and research objectives that are modelled in this study.[130] The nature of the questions posed to the respondents may vary due to their differing opinions, perceptions, experiences, and work positions regarding the issue of illicit enrichment in corruption prevention. Aside from that, the semi-structured interview provided reliable and comparable qualitative data for this research. All the selected expert respondents have extensive experience in governance and regulation of corruption laws.[131] In fact, the technique of data collection, such as interviews, is considered more convenient and reliable, and it is a widely used method of information collection.[132] This method of data collection enables the researcher to obtain information about a person's views, opinions, attitudes, behaviour, beliefs, ideas, feelings, perceptions, reactions, likes or dislikes on the corruption and illicit enrichment issue.[133]

Universiti Utara Malaysia

This research adopted a qualitative method because of the nature of the study itself, looking into the law and convention while at the same time being able to answer the research questions and research objectives of this study. Besides, qualitative research is progressively exploratory in nature and can be expressive, and it may result in the development of ideas and theories rather than the verification of them.

---

[130] Anwarul Yaqin, *Legal Research and Writing* (Kelana Jaya: Malayan Law Journal Sdn Bhd, 2007). 138.
[131] Ibid.
[132] Ibid.,169.
[133] Puvenesvary Muthiah, "Interviews," in *Qualitative Research: Data Collection and Data Analysis Techniques*, 2nd ed. (Sintok, Kedah: UUM Press, 2011), 19.

These multiple sources of data, such as interviews and doctrinal research, collected for this legal research can provide an in-depth perspective on the corruption and illicit enrichment issues within the case. It involves the in-depth analysis of multiple sources of qualitative data, such as documents and interviews.[134] This research has collected data from 10 interviews conducted with relevant respondents from different backgrounds, all possessing the same knowledge of illicit enrichment law, which is further elaborated in Table 1.6.4: Classification of Respondents under Subtopic 1.6.4: Sampling and Selection. This data sufficiently addressed the research questions and research objectives of this legal research. 10 respondents are enough to support the reliability and validity of this research because, according to Siti Tobi in 2015, the sample size requirement according to qualitative research is between 5 and 30 interviews, while according to Creswell[135] and Morse,[136] they have reported that a good number for a qualitative study should be between 8 and 15 respondents. Again, we cannot safely say that the researcher cannot go beyond 15. If more than 15 is what it takes to answer the research questions and research objectives, then it is good. In fact, choosing more than one respondent can help the researcher enhance the validity and reliability of the data collection.[137]

Universiti Utara Malaysia

[134] John W. Creswell, *30 Essential Skills for the Qualitative Researcher*, 2nd ed. (SAGE Publications, 2016).
[135] Ibid.
[136] Janice M. Morse, "Determining Sample Size," *Qualitative Health Research* 10, no. 1 (2000): 3–5.
[137] Ani Munirah Mohamad, "Module Webinar on Information on Qualitative Research Study: Data Management & Transcription," webinar, July 26, 2020.

1.6.2 Research Scope

A study should not be excessively general but rather should focus on a specific period, geographical area, people, place, and institution.[138] Therefore, the scope of the study focuses on the legal analysis of the Malaysian Anti-Corruption Law, which is the MACC Act 2009. The law of corruption within the scope of this study is limited to issues of illicit enrichment crime among the public sector only, and the scope of this thesis includes criminal offences associated with illicit enrichment.

Other legislations that are also included in this study that contain specific legislation on corruption and several definitions within the scope of this study are the Federal constitution, Penal Code (Act 574), Interpretation Acts 1948 & 1967 (Act 388), Regulation 10, Public Officers (Conduct & Discipline) Regulations 1993 and Service Circular No. 3 of 2002 and other related legislation within the scope of this study.

Universiti Utara Malaysia

Furthermore, in the case of corruption, this thesis also examines all relevant provisions similar to illicit enrichment, such as the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) (AMLATFPUAA), the Penal Code, the Forfeiture of Property, and other related laws and regulations, but to a limited extent. All these laws are interrelated with illicit enrichment and corruption cases in Malaysia.

[138] Anwarul Yaqin, *Legal Research and Writing* (Kelana Jaya: Malayan Law Journal Sdn Bhd,2007).

Meanwhile, the geographical scope of this study was limited to Malaysia, with the researcher selecting specific locations where expert respondents reside and work. Furthermore, the scope of this study is exclusively on public officers in Malaysia.

This focus of this study is on the Malaysian legal system, with necessary comparisons to other jurisdictions such as Hong Kong, Singapore, Argentina, and Egypt. Notably, a comparative analysis between Section 36 of the MACCA and Section 10 of the Prevention of Bribery Ordinance (Chapter 201) (POBO) in Hong Kong is one of the research methods used in this study to analyse the similarities and differences in the literal text and wording of the two provisions. Following data interviews, a literature review, and a comparison analysis, the researcher identified and selected Section 10 of the POBO Hong Kong as one of the best laws of illicit enrichment from those jurisdictions, as well as an amendment to Section 36 of the MACCA. Research Question No. 3 in Chapter 4 further discusses this.

Universiti Utara Malaysia

### 1.6.3 Types of Data

The main resources used in doctrinal legal research are largely library-based and it is described as primary, secondary, and tertiary data sources. Hence, the researcher should specify the type of data needed and their relevance to this study. The primary sources required by a researcher will be accessible in libraries, archives, and other databases. Basically, this study relies on the primary data as follows, court cases, statutes such as Malaysian Anti-Corruption Commission Act 2009, Penal Code (Act

574) and other relevant statutes. Besides that, findings outcome from the interview session are also considered as primary data collection. The primary method of data collection is the most original and reliable method of data collection.[139]

Meanwhile the secondary sources for this study were taken from article from journals, books, law reports, law reviews, statistics, annual reports, political analyses and commentaries, newspaper articles, press reports, government reports, thesis, internet sources, unpublished works, and conference proceedings. This study also used tertiary data which compile and summarise secondary sources. There are bibliographies, guidebooks, manuals, dictionaries, encyclopaedias, and online materials.

Universiti Utara Malaysia

### 1.6.4 Sampling and Selection

A sampling method is a preliminary procedure before embarking upon the task of using interviews for data gathering.[140] The sampling of the interviews depended on the non-probability sampling or also known as "Purposive Sampling" or "Deliberate Sampling" or "Judgement Sampling."[141] The researcher used purposive sampling as a method to gather data in this study. Purposive sampling is when the researcher does the sampling selection by selecting and picking respondents who only meet the

[139] "Types of Primary Data," *Reading Craze*, 2013, http://readingcraze.com/index.php/types-of-primary-data/ (accessed February 8, 2019).
[140] Anwarul Yaqin, *Legal Research and Writing* (Kelana Jaya: Malayan Law Journal Sdn Bhd, 2007),149.
[141] Rattan Singh, *Legal Research Methodology*, 1st ed. (Lexis Nexis, 2013).

purpose of the research,[142] and who can provide specific knowledge about the topic of the study.[143]

Sampling is an organised method of selecting small quantity of people or groups out of a larger grouping of persons (called population or universe). It is the process of choosing a certain amount sample pursuant to certain defined ideologies and applying the data from the samples to the whole population.[144] The procedure to adopt in selecting persons who would be the respondents is called sampling design.[145]

Selecting the possible respondents (sample members) is one of the important tasks of a researcher who intends to collect information by interviewing individuals. Type of individuals that should be interviewed will depend upon the purposes of the research itself, the nature of information needed and the feasibility of conducting interview with the intended interviewees.[146]

For this research purpose, the researcher had chosen lawyers registered as member of the Bar Council (practising advocates and solicitors), Deputy Public Prosecutors from MACC and the government, the relevant MACC Officers, and academicians having expertise in corruption and illicit enrichment law as her respondents to be

[142] Anwarul Yaqin, *Legal Research and Writing* (Kelana Jaya: Malayan Law Journal Sdn Bhd, 2007), 233.
[143] Siti Uzairiah Mohd Tobi, "Qualitative Data Analysis," Webinar Virtual Summit Sekolah Penulisan Thesis, December 2020.
[144] Anwarul Yaqin, *Legal Research and Writing* (Kelana Jaya: Malayan Law Journal Sdn Bhd, 2007), 221.
[145] Rattan Singh, *Legal Research Methodology*, 1st ed. (Lexis Nexis, 2013).
[146] Ibid, 171.

interviewed. These are the respondents that are able to provide information and express their views on the corruption matter as they have some useful knowledge about the said issue.

The sampling units for the aforementioned respondents were selected based on four criteria: First, the respondents' major area of study is criminal law, or corruption crime. Secondly, the respondents work in corruption-related fields. Thirdly, the study covers topics such as the theoretical and practical aspects of corruption, illicit enrichment crime, asset declaration systems, prosecution and law enforcement, legislative policy, and decision-making. Finally, there is the respondent's relevant position and experience, or level of literacy. Essentially, the selection is based on their relevance to the purpose of the study that the researcher has in mind.[147] The total number of respondents is expected to be 25, with five respondents in each category. However, due to several limitations, such as the fact that the population of the said respondents in Malaysia is quite large, the researcher only studies a selected and manageable number of respondents by employing the sampling method of data collection, and only ten respondents in total are being interviewed for this study. The researcher selected the participants based on their relevant position, specific experience, knowledge, and responsibility, so it will adequately support the objectives of this study. This aligns with the number suggested by Morse[148] and

Universiti Utara Malaysia

[147] Anwarul Yaqin, *Legal Research and Writing* (Kelana Jaya: Malayan Law Journal Sdn Bhd, 2007), 223.
[148] Janice M. Morse, "Determining Sample Size," *Qualitative Health Research* 10, no. 1 (2000): 3–5.

Creswell,[149] who suggest that a good number for a qualitative study should be between 8 and 15 respondents.

In qualitative data collection, selecting and choosing more than one respondent can actually help researchers enhance their research validity and reliability[150] in the future, especially when they want to justify their research data collection.[151] The researcher had stopped collecting data after the 10th respondent since the researcher had already been receiving consistent answers from the respondents,[152] and there was a pattern of answers from the past interviews, therefore the researcher had stopped at that point because the following respondents were not providing any additional or new information. The researcher knew that she had achieved data saturation when she consistently received the same answer from the respondents. Saturation is essential for achieving high-quality qualitative work, yet there are no published rules or tests of suitability to determine the sample size required to achieve saturation.[153] According to Creswell,[154] researchers determine the optimal duration of their fieldwork, examine whether the data has reached a point of saturation to form strong themes or categories, and observe how the data analysis progresses into a persuasive narrative. This is the process, according to Patton, of a repetitive analysis of the data by qualitative analysts to determine the consistency and validity of the theories,

[149] John W. Creswell, *30 Essential Skills for the Qualitative Researcher*, 2nd ed. (SAGE Publications, 2016).
[150] According to (Maxwell, 1996) and (Patton,1990), the validity and reliability of the data depend to a great extent on the methodological skill, sensitivity, and integrity of the researcher.
[151] Ani Munirah Mohamad, "Module Webinar on Information on Qualitative Research Study: Data Management & Transcription," webinar, July 26, 2020.
[152] Ibid.
[153] Janice M. Morse, "The Significance of Saturation," *Qualitative Health Research* 5, no. 2 (1995): 147–149.
[154] John W. Creswell, *30 Essential Skills for the Qualitative Researcher*, 2nd ed. (SAGE Publications, 2016).

categories, explanations, and interpretations.[155] The criteria for sampling in this study are listed below.

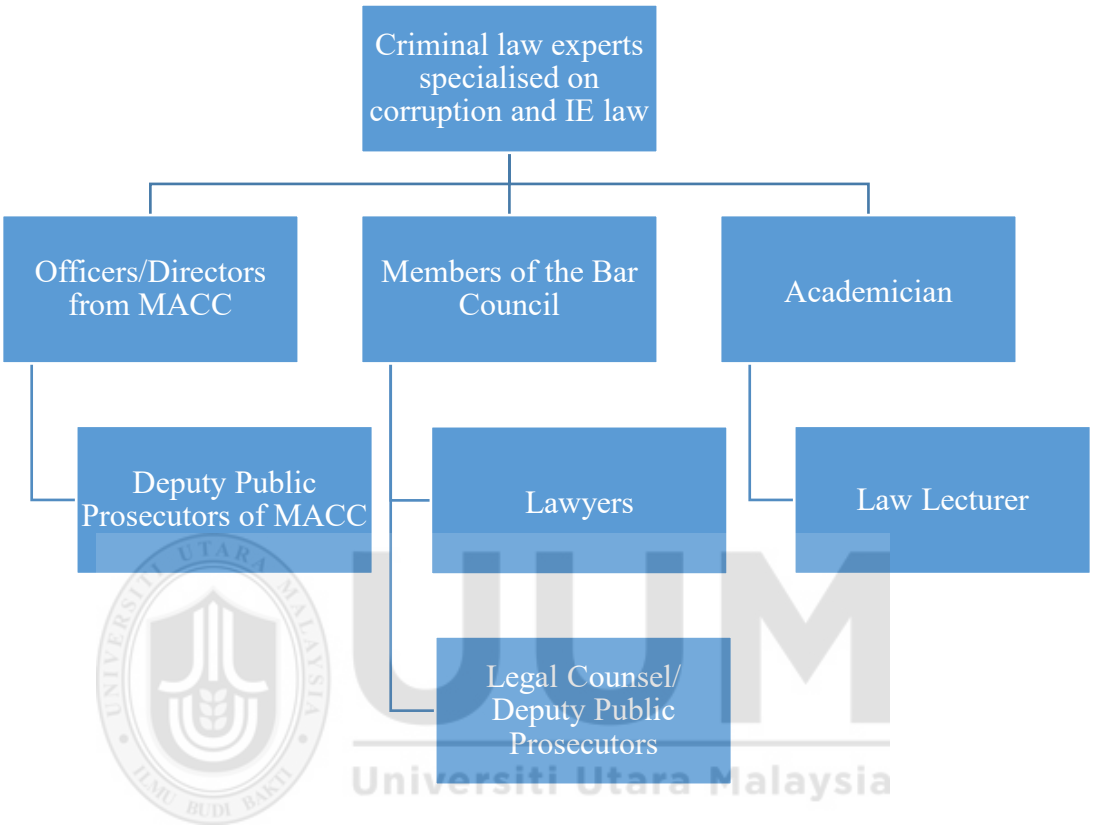



Figure 1.6.4 Criteria of Sampling.[156]

The researcher contacted sixteen individuals from selected fields for interviews, following the sampling criteria chart above. However, only ten respondents responded and indicated their willingness to be interviewed. Six people had expressed regret for declining the interview due to time constraints and the sensitive

[155] John W. Creswell and Dana L. Miller, *Determining Validity in Qualitative Inquiry,* Oxford Research Encyclopedia of Psychology 39, no. 3 (2010).
[156] Mohannad Ahmad Musa Abu-Morad, "An Analysis of the Illicit Enrichment Law and Prosecution Issues in Jordan" (PhD diss., Universiti Utara Malaysia, 2016), 30.

nature of the study's issue. Ten respondents accepted the interview as stated in Table 1.6.4 Classifications of the respondents below.

The researcher conducted her first interview session in November 2019. After the researcher had finished interviewing her 7th respondent on February 26, 2020, around a month later, in March 2020, which is halfway through the interview process, the first ever lockdown was enforced due to the COVID-19 pandemic in Malaysia. Due to the pandemic, certain restrictions and limitations had to be considered. As a result, the one-on-one interview session with the following respondents had to be postponed due to the virus concern. Qualitative interviews are traditionally conducted on a face-to-face basis,[157] however due to the COVID-19 restrictions, the researcher had no choice but to conduct a telephone interview with the other respondents.

Universiti Utara Malaysia

So, due to some reasons mentioned above, some interview sessions had to be rescheduled, and as a result, the researcher spent more than a year completing the interview sessions. So, the researcher had no choice but to finish collecting the data despite these challenges and limitations. Thus, only 10 people had agreed to be interviewed because of the shortage of time, the sensitivity of this issue, and the COVID-19 pandemic. The 10 respondents are competent authorities related to the fields of this thesis, including corruption, illicit enrichment law, and asset declaration, in a way to get a deeper and more complete understanding of their

[157] Muhammad Bilal Farooq and Charl De Villiers, "Telephonic Qualitative Research Interviews: When to Consider Them and How to Do Them," *Meditari Accountancy Research* 25, no. 2 (2017): 291–316.

experiences and opinions about the said field.[158] The classifications of respondents are shown in Table 1.6.4 below.

Table 1.6.4 Classifications of Respondents [159]

| Occupational role | Label | Number of participants |
|---|---|---|
| LAWYERS | Respondent 9 & 10 | 2 |
| DIRECTOR OF MACC (STATE) | Respondent 2 | 1 |
| MACC OFFICERS | Respondent 1, 5 & 6 | 3 |
| MACC DEPUTY PUBLIC PROSECUTORS | Respondent 8 | 1 |
| LAW LECTURER/SCHOLAR | Respondent 3 | 1 |
| DEPUTY PUBLIC PROSECUTORS (AGC) | Respondent 4 | 1 |
| STATE LEGAL OFFICER | Respondent 7 | 1 |
| | **Total Respondents** | 10 |

The researcher has introduced herself as a PHD student at UUM COLGIS[160] and explained the purpose of this study, clarified the background of the study, and

[158] Tijjani Halliru, "Ethno-Religious and Political Conflicts: A Study of North-Eastern Region of Nigeria" (PhD diss., Universiti Utara Malaysia, 2012).
[159] Ani Munirah Mohamad, "Module Webinar on Information on Qualitative Research Study: Data Management & Transcription," webinar, July 26, 2020.
[160] University Utara Malaysia, College of Law, Government and International Studies. Please refer to Appendix 1, authorisation letter from University Utara Malaysia.

explained the importance of having this interview with the respondents. As a part of the research ethics in completing this thesis, the respondents were also informed by the researcher of their rights on the following issues, firstly, their right to decline or reject any question, secondly, their right to end the interview at any time, even before the completion of questions. The respondents were also informed that the interview session will be documented in audio recording and writing, and all information, opinions, and suggestions provided by them will be used solely for the aforesaid research purposes.

Besides, the researcher is prohibited from using the content of this interview, either in whole or partially, in any other manner. The respondents were also informed about the confidentiality of the interview data regarding their personal information, such as their names, their positions, or their workplaces. Their identity will remain anonymous and will not be associated with the research materials or reports that arise from the study. This means the respondents gave their consent to take part in the interview. The researcher also must abide by the permission of the respondents to publish, where their responses will be kept strictly confidential, and the researcher is prohibited from publishing any information pertaining to the subject matter of the interview or personal details without explicit authorisation to do so.[161]

[161] See Appendix 2, Consent Form for Respondents to be interviewed.

1.6.5 Data Analysis

The data analysis of this social legal research involves doctrinal legal research analysis and qualitative research analysis. Doctrinal research involves a systematic analysis of statutory provisions, and the legal principles associated with them or derived from them. It also involves organising the legal propositions and principles logically and sensibly.[162]

The tools of analysis in doctrinal legal research are statutory materials, government reports, case law, legal history, judgements, and case reports.[163] It comprises analysis of case law, positioning, and systematising legal plans, as well as the study of legal organisation via legal reasoning or rational judgment. It also delivers a systematic explanation of the procedures it governs in a specific legal category.[164]

Universiti Utara Malaysia

Doctrinal legal research requires a high level of critique and review as a contextual background.[165] It consists of a critical conceptual analysis of all related regulation and law cases to expose law statements connected with any issue under inquiry. The critique of conceptual analysis depends on an understanding of the judicial precedent between the court's powers and the rule of legislative analysis.[166] The principles that are applied by courts to understand, analyse, and apply statutory words and

[162] Rattan Singh, *Legal Research Methodology*, 1st ed. (Lexis Nexis, 2013).
[163] Vijay M Gawas, "Doctrinal Legal Research Method: A Guiding Principle in Reforming the Law and Legal System towards The Research Development," *International Journal of Law* 3, no. 5 (2017): 130.
[164] Ibid.,128.
[165] Ibid.,130.
[166] Vijay M Gawas, "Doctrinal Legal Research Method: A Guiding Principle in Reforming the Law and Legal System towards The Research Development," *International Journal of Law* 3, no. 5 (2017): 129.

provisions are referred to as the rules of interpretation or construction. The principles or rules in interpreting and construing statutory provisions are the plain meaning rule, the mischief rule, the golden rule, and the purposeful approach to interpretation.[167]

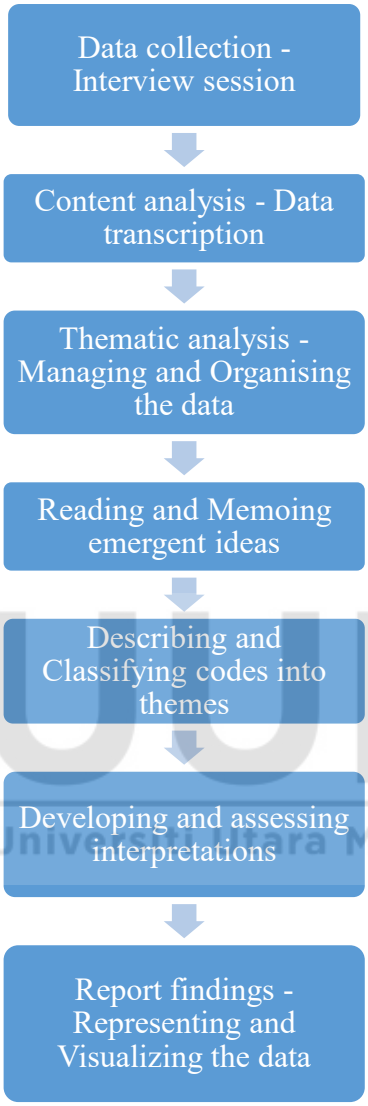
Doctrinal research in this legal research concerns legal matters on corruption, illicit enrichment law, and the asset declaration system. So, it is imperative to solve the problem through review, criticism, theoretical analysis and application of the statutes, legislation, case law, and conventions. Therefore, to achieve the objectives of this study, historical, analytical, comparative, and philosophical methods were utilised by the researcher. The doctrinal analysis of this research is the main key to the improvement and functioning of legal systems, as it also produces a lot of research of outstanding quality.

Universiti Utara Malaysia

Meanwhile, the interview data and qualitative data of this legal research were analysed using content analysis and thematic analysis. The details of the analysis for this legal research are provided below. The six important stages of data analysis that are applicable to the data analysis of this thesis are illustrated in Figure 1.6.5.1: [168]

[167] Anwarul Yaqin, *Legal Research and Writing* (Kelana Jaya: Malayan Law Journal Sdn Bhd, 2007), 112.
[168] Mohd Mursyid Arshad, "Workshop on Qualitative Research and Qualitative Data Analysis," Universiti Putra Malaysia, 2021.

Figure 1.6.5.1 The Data Analysis Stages [169]




Universiti Utara Malaysia

Data analysis is the process of making sense of the data in social legal research.[170] The data collection process is the first step in data analysis. It is the process in which

[169] Mohd Mursyid Arshad, "Workshop on Qualitative Research and Qualitative Data Analysis," Universiti Putra Malaysia, 2021.
[170] Ani Munirah Mohamad, "Module Webinar on Information on Qualitative Research Study: Data Management & Transcription," webinar, July 26, 2020.

the researcher conducts an in-depth interview in a semi-structured form to get information from respondents. During the data collection process, questions were asked of the respondents, and the data were recorded using audiovisuals. After the interview session, the researcher prepared the data for analysis, transcribed the audio-visual data, and directly analysed it. The researcher read through the audio data to obtain a general sense of the material.[171]

After data collection, the next step is content analysis, which involves transcribing the audio data from the interview session into a written text or document.[172] During the content analysis process, the researcher must read through the interview data for general meaning.

After the researcher had completed transcribing the interview data using content analysis, the next stage was to analyse the interview data using thematic analysis. Researchers use thematic analysis as an organised method to examine qualitative data. It involves organising the dataset and efficiently uncovering hidden trends and inferences based on specific criteria or themes.[173] It is also the process of

[171] Ani Munirah Mohamad, "Module Webinar on Information on Qualitative Research Study: Data Management & Transcription," webinar, July 26, 2020.
[172] Siti Uzairiah Mohd Tobi, "Qualitative Data Analysis," Webinar Virtual Summit Sekolah Penulisan Thesis, December, 2020.
[173] Global Assignment Help, "Thematic Analysis: 6 Steps to Perform Thematic Analysis [Definition, Purposes, Steps, Example]," YouTube, posted September 6, 2022, accessed October 10, 2022, https://www.youtube.com/watch?v=0spO76X6aLU&t=7s

categorising patterns or themes within qualitative data.[174] Thematic analysis is the first qualitative method that provides fundamental skills that will be useful for guiding any other type of analysis.[175] The analysis was done by analysing the data interview transcript to seek out emerging patterns in the data interview transcript.[176]

Systematic reviews use the term thematic synthesis, a translated method for primary research analysis.[177] One of the objectives of thematic analysis is to identify themes. For instance, when a researcher identifies significant and remarkable patterns in the data, they use these themes to label the research or provide commentary on anything related to that specific subject. This goes far beyond simply reviewing the data, as a well-crafted thematic analysis provides a thorough and reasonable analysis of the data. One of the common difficulties is using the primary interview questions as themes. Normally, this reflects the point that the data have been summarised and organised rather than analysed.[178]

Universiti Utara Malaysia

[174] Moira Maguire and Brid Delahunt, "Doing A Thematic Analysis: A Practical, Step- By-Step Guide for Learning and Teaching Scholars," *All Ireland Journal of Teaching and Learning in Higher Education*, no. 3 (2017): 3352.
[175] Virginia Braun and Victoria Clarke, "Using Thematic Analysis in Psychology," *Qualitative Research in Psychology* (2006).
[176] Siti Uzairiah Mohd Tobi, "Qualitative Data Analysis," Webinar Virtual Summit Sekolah Penulisan Thesis, December, 2020.
[177] James Thomas and Angela Harden, *Methods for the Thematic Synthesis of Qualitative Research in Systematic Reviews*, NCRM Working Paper Series (London, England, 2007).
[178] Moira Maguire and Brid Delahunt, "Doing A Thematic Analysis: A Practical, Step- By-Step Guide for Learning and Teaching Scholars," *All Ireland Journal of Teaching and Learning in Higher Education*, no. 3 (2017): 3353.

After categorising themes in the data, the next important step is managing and organising the data by coding it.[179] This data coding under thematic analysis was done with the help of a qualitative data analysis computer software called NVivo to effectively manage, analyse, and extract valuable insights from unstructured qualitative data interviews.[180] The software allows users to classify, organise, and arrange data, investigate data relationships, and integrate modelling with linking, shaping, and searching.[181] All the retrieved audiovisuals from computer software can be put into this thesis to facilitate reporting, and because it comes from the data, that makes it more valid in the sense that the researcher is representing the findings from the data, which is very helpful in convincing the readers of this research. Even though it is not compulsory for the researcher to use computer software in data analysis, the researcher decided to use computer software for this data analysis for the purpose of proper management of the data as well as proper reporting.

Universiti Utara Malaysia

The main important step in a thematic analysis that is going to be applied in this study is to first become familiar with the transcribed text data by reading and memoing[182] emergent ideas from the data before it can be broken down into smaller meaning units. After getting familiar with the data, the next step is to describe,

[179] R. Sivabala Naidu, "Content Analysis," in *Qualitative Research : Data Collection and Data Analysis Techniques* (Sintok, Kedah: UUM Press, 2011), 104.
[180] M. Puvenesvary et al., *Qualitative Research : Data Collection and Data Analysis Techniques*, Second edition. (Sintok, Kedah: UUM Press, 2011).
[181] Ibid.
[182] According to (Birks, 2008), memoing is a key technique in qualitative research, where you write down your thoughts, insights, and interpretations of your data throughout the research process. Memoing can help you deepen your analysis, generate new ideas, and communicate your findings - refers to the process where researchers make notes while exploring the data.

identify, and classify codes into themes.[183] In identifying and classifying the themes, the researcher must look at the data in detail. The next step is to develop a coding scheme, which involves creating and analysing interpretations. These initial themes can be grouped together to initiate the development of a coding scheme, which includes coding text and developing descriptive themes.[184] This procedure is commonly known as the 'open coding process.' It is beneficial to start expanding the coding scheme when the original data has been gathered. In the categorisation and open-coding processes, themes and categories are identified.

The following step is to begin applying these codes to the entire set of data, either by putting codes on the margins of transcripts or notes or by marking the text online.[185] The researcher must establish the coding frame, determine what the respondent is saying in the coding frame, and then assign the code labels to the left margin. In doing the coding frame, it is important for the researcher not to over code and be carried away with what the respondents say. During the coding process, the researcher must practice 'lean coding', which involves practicing single-layer coding without yet categorising it under specific ideas or major themes. Instead, the researcher should focus on providing as much detail as possible. After that, the researcher looked for any overlapping among codes, and if there were any overlapping codes, the researcher would combine the codes into other developed

[183] Mohd Mursyid Arshad, "Workshop on Qualitative Research and Qualitative Data Analysis," Universiti Putra Malaysia, 2021.
[184] Michael Quinn Patton and Michael Cochran, "A Guide to Using Qualitative Research Methodology," 2007, 24.
[185] Ibid.

themes. The researcher would look for any similarities or shared characteristics between one code and another and combine the codes into relevant themes that have been developed. This is because the researcher extracts interview data from its original context and combines it with other samples of data on the same topic to begin looking for patterns in the data.[186]

The next step is representing and visualising the data. Once the categories and themes are established, the analysis and writing process begins. The researcher reported the findings in Chapter 4 and the methodological chapter. Besides, this study not only identifies relevant legal principles related to the issue of illicit enrichment in Malaysia, but also proposes improvements and recommendations to the current illicit enrichment law, thereby enhancing our understanding of the problem. The recommendations and improvements were discussed under the discussion and recommendations chapter. Under the findings chapter, the researcher did not only report her findings of the thesis, but she was also examining a broader picture of how related authorities, legislation, and data from respondents can overcome the issue of illicit enrichment among public officers in Malaysia.

The main difference among the many qualitative analysis methods is in the researcher's approach to the analysis process and ability to adapt to the findings. Following the analysis, the researcher can provide a concise summary of the main

[186] Michael Quinn Patton and Michael Cochran, "A Guide to Using Qualitative Research Methodology," 2007, 26.



Universiti Utara Malaysia

themes and categories in the form of a table, enabling the reader to quickly get an overview of the findings. Furthermore, it would be appropriate to provide one example of the analysis process illustrated above. In order to enhance the validity of the study, the researcher might conduct a respondent validation, also known as a member check. This involves the researcher returning to the respondents and sharing the study's findings to verify mutual agreement.[187]

Qualitative data analysis is a complex process that involves a back-and-forth process and must be done iteratively and concurrently. The steps in the data analysis process must be carried out repeatedly and simultaneously. This means that the researcher can code the first interview while reading through the data for the second interview and transcribing the third interview. The significance of this process is that the researcher can identify and realise any loopholes or gaps that occurred during the interview session with the first informant, and the loopholes are fixed and can be improved straight away for the next interview session.[188]

Sampling data analysis provides a higher level of accuracy than a study with a large number of people involved. A researcher can pay more attention to accuracy, editing, and analysis when the numbers involved are smaller compared with complete

[187] Marci Catanzaro and Nancy Fugate Woods, "Using Qualitative Analytical Techniques," in *Nursing Research: Theory and Practice* (The CV Mosby Company, 1988). & Philip Burnard, "A Method of Analysing Interview Transcripts in Qualitative Research," *Nurse Education Today* 11, no. 6 (1991).

[188] Ani Munirah Mohamad, "Module Webinar on Information on Qualitative Research Study: Data Management & Transcription," webinar, July 26, 2020.



Universiti Utara Malaysia

coverage. Where the population is of a homogenous nature, the examination of a few samples may be enough to draw inferences and conclusions.[189]

The researcher must take this into consideration during the analysis process in order to minimise any bias from her own influence. Qualitative content analysis involves the presentation of data in the form of words and themes, which enables the interpretation of the results.[190]

Nevertheless, during the process of analysis, human errors are always possible. These errors might arise from fatigue, misinterpretation, and personal bias. The researcher is accountable for maintaining the quality of the process by ensuring validity and reliability throughout the entire study, as the outcomes must be rigorous and trustworthy.[191] Validity in a qualitative study refers to the extent to which the findings accurately represent the phenomena being studied, whereas reliability refers to the consistency of obtaining the same results if the study were to be repeated.[192] In order to enhance and increase the validity and reliability of this thesis, the researcher uses the member's checking strategy, whereby she asks experienced researchers to check and read the research. The researcher also hired a proofreader to proofread this thesis in order to establish the validity and authenticity of the findings.

Universiti Utara Malaysia

[189] William G. Zikmund, *Business Research Methods*, 6th ed. (Ohio, South Western, 2000), 340.
[190] Mariette Bengtsson, 'How to Plan and Perform a Qualitative Study Using Content Analysis,' *NursingPlus Open 2* (2016): 8–14, https://doi.org/10.1016/j.npls.2016.01.001.
[191] R. Sivabala Naidu, "Content Analysis," in *Qualitative Research : Data Collection and Data Analysis Techniques* (Sintok, Kedah: UUM Press, 2011), 101–111.
[192] Janice M. Morse and Lyn Richards, *Readme First for A User's Guide to Qualitative Methods*, 3rd ed. (SAGE Publications, Incorporated, 2002).

It is important that all research be subject to criticism and review. Additionally, the report should include a discussion of the study procedure and results in connection to ideas associated with validity, reliability, and trustworthiness.[193] In general, the researchers prioritise acquiring an extensive understanding of a specific subject and presenting various perspectives rather than focusing on a single fact and making generalisations. As a result, qualitative research is frequently impossible and constantly challenging to duplicate due to the context-specific nature of the data.[194]

Universiti Utara Malaysia

[193] Mariette Bengtsson, 'How to Plan and Perform a Qualitative Study Using Content Analysis,' *NursingPlus Open 2* (2016): 8–14, https://doi.org/10.1016/j.npls.2016.01.001.
[194] Ibid.

The summary of the whole process of research methodology for this legal research is illustrated below.

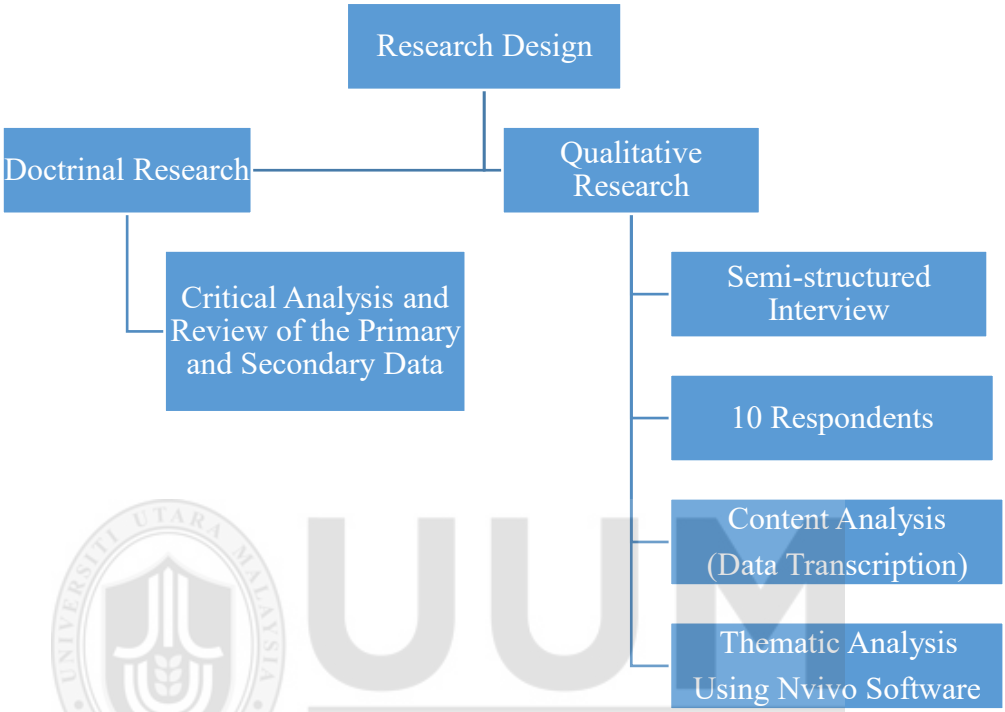



Figure 1.6.5.2 Summary of Research Methodology

In conclusion, research methodology is one of the vital factors in achieving the objective and answering the questions of this study. In order to discover solutions to the questions of this study, the researcher needs to use several tools and methods, as mentioned above, in accomplishing this study. The methods employed by the researcher are beneficial for both this study and other future studies on this topic of concern. In discussing ways to prevent corruption and illicit enrichment in the public sector in Malaysia, it is very important to observe the legislation, reported cases, opinions and perspectives from experts, and the world's statistical data on the

Universiti Utara Malaysia

corruption issue. The opinions and perspectives of selected respondents on illicit enrichment are also important for this research to make it different from other research. To study the problem of this research, the researcher uses a new qualitative method of inquiry, gathering data in a way that is sensitive to the people and places being studied and analysing the data in a way that is both inductive and logical to find patterns or themes. The final written report or presentation combines participant voices, researcher reflexivity, an in-depth description and interpretation of the situation, and a literature contribution or demand for change.[195]

## 1.7 Limitation of the Study

The researcher encountered a few limitations in conducting this research. The limitations of this study are, firstly, limited resources. The specific resources involving the illicit enrichment law in Malaysia are very limited because the law itself is scattered. In fact, the reported cases are available only in the case of corruption. The only cases of illicit enrichment that can be used as the core problem of this study are those exclusively covered by the media and not those that have been adjudicated by the court. However, this limitation can be overcome by conducting semi-structured interviews to gather the information required by the researcher, and a few cases of corruption and money laundering can still be used by the researcher, even though they are very limited.

Universiti Utara Malaysia

[195] John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, 4th ed. (London, England: SAGE Publications, 2013).

Second, there are time constraints. Having interviews as one of the research methodologies is time-consuming. The time involved in a personal interview usually depends on the geographical proximity of the respondents, the length and nature of the questions, and the number of people to be interviewed.[196] The researcher needs to travel, often for long distances, meet with people for the purpose of the interview, get the interview done, and collect primary data genuinely. Respondents who are not located in a single geographical area require more time to complete the interview.[197] In order to overcome the time limitation, the researcher must effectively manage the time for the interview process to run smoothly and still adhere to the prescribed time frame.

Thirdly, the sensitivity of this issue contributes to respondents' reluctance to participate in interviews. The desire for privacy may be the reasons for respondents' reluctance to be interviewed. Many people are busy or attach no importance to research, and they may not like to answer questions of a personal or sensitive nature in a face-to-face situation,[198] especially corruption, because it is a very sensitive issue to be studied in general. Having to do research on a sensitive issue like corruption may somehow affect the cooperation of some respondents, but not all of them. This problem can be overcome by interviewing only respondents who are willing to cooperate and share their thoughts, opinions, and perceptions regarding corruption

[196] Anwarul Yaqin, *Legal Research and Writing* (Kelana Jaya: Malayan Law Journal Sdn Bhd, 2007), 183.
[197] Ibid.
[198] Ibid, 184.

and illicit enrichment crimes. Due to the limitations, only 10 people had agreed to be interviewed.

## 1.8 Literature Review

In this literature review, the issues of corruption, illicit enrichment and the asset declaration system in Malaysia are further discussed and divided into three scopes of literature, namely, the legal issues and implications of corruption, the fundamental concept of illicit enrichment, and the asset declaration system.

### 1.8.2 The legal issues and Implications of Corruption

Corruption has existed in the system for a long time, and it is a global phenomenon that raises concern worldwide. Corruption is the cause of some issues that affect countries including war, poverty, disease, and backwardness.[199] Regardless of our own preferences, this is a problem that should be taken seriously. The concern for corruption is obvious for both developing and underdeveloped countries.[200] When he was in office as the President of the World Bank, Jim Young Kim (2013) described, "*each dollar that a corrupt official or businessperson embezzles is a dollar unlawfully taken from the public, depriving them of improved healthcare, education,*

[199] Zaleha Othman, Rohami Shafie, and Fathilatul Zakimi Abdul Hamid, "Corruption – Why Do They Do It?," *Procedia - Social and Behavioral Sciences* 164, (2014): 248.
[200] Ibid.

*and other essential infrastructure*."[201] Corruption is about power, and the powerful will always find ways to avoid being caught. The powerful involving the top management's people who get involved with corruption crimes know how to deal and escape and it is always harder to prove their crimes, and this is why integrity is important in our way of life.[202]

Corrupt behaviour weakens good authority, causes the misallocation of resources and damages the development of the public and private sectors.[203] Besides, corruption is the only utmost difficulty to develop socially and economically. Any improvement is weakened by cooperating the legal regulations and weakening the institutional foundations where economic growth depends.[204] In the event where corruption in a country is terrible, and the cost of doing business has increased, that country will find its foreign and domestic investors leaving from further investing and doing business in the country. In this case, the development of economy is stuck, income levels fall, competitiveness decreases, jobs are lost, and the society suffer.[205]

Universiti Utara Malaysia

[201] Nur Shafiqa Kapeli and Nafsiah Mohamed, "Insight of Anti-Corruption Initiatives in Malaysia," *Procedia Economics and Finance* 31 (2015): 532.
[202] Mohd Sidek Hassan, "EAIC Committed to Addressing Integrity Issues, Challenges, says Chairman," *The Star*, March 2023, https://www.thestar.com.my/news/nation/2023/03/21/eaic-committed-to-addressing-integrity-issues-challenges-says-chairman
https://www.thestar.com.my/news/nation/2023/03/21/eaic-committed-to-addressing-integrity-issues-challenges-says-chairman
[203] *People's Attitude towards Corruption and Anti-Corruption Commission,* Office of the Anti-Corruption Commission, January 2009.
[204] Ibid.
[205] Ibid.

Corruption is present in all countries, yet some countries are perceived to be proactively fighting it. For example, China has initiated a significant campaign against corrupt public officials, including executing some of them.[206] In general, the primary motive for bribery in all institutions is to speed up processes. For instance, in the Malaysian public sector, it is common for individuals to engage in bribery as a means to speed up and simplify their work processes,[207] as in the case of ***Mohammad Hafez bin Mohd Azmi v Public Prosecutor (SPRM)***,[208] the appellant was charged under Section 17(a) of the MACC Act for taking bribe. As an immigration officer of Malaysia, the appellant had received a sum amount of money to make an endorsement on the passport of the visa for the five Bangladesh citizens. The appellant had misused his power as a public officer to receive gratification to speed things up and make the process easy for the one paying the bribe. The high incidence of bribery in exchange for faster service is a concerning issue. The individual offering the bribe may feel entitled to fast service, ignoring the needs of others. Things will appear or to progress very slowly if not at all if the process doesn't involve corrupt money. This immoral culture needs to stop.

The complexity of corruption is not just an issue to speed things up only but more than that. The law has evolved to keep up with the complexity of corruption. In the

[206] Andrew Lo, "Broad Impact of Bribery," *The Star Online*, 2017, http://www.thestar.com.my/metro/views/2017/03/10/broad-impact-of-bribery-graft-takes-food-off-the-table-hampers-education-and-impedes-healthcare/. (accessed June 15, 2018).
[207] Vinay Bhargava, "In the Cancer of Corruption," *World Bank Global Issues Seminar Series*, 2005, http://siteresources.worldbank.org/EXTABOUTUS/Resources/Corruption.pdf.
[208] [2013] 7 MLJ 585

world nowadays, corruption cases not only involve giving or receiving money, but it may come in different forms, for example, bribery, fraud, graft, speed money, extortion, favouritism, theft, embezzlement, falsification of records, sex corruption, gifts, loans, commissions, bitcoin, donations, property,[209] property or interest in the property, which is movable or immovable property or any similar profits,[210] discount offers, job position or placement, votes, services (including sex), loans, and any other practices of payment and purchases.[211] The crimes that evolve are becoming more complicated, especially with the advent of technology. Technology helps offenders conceal their illegal activities. In line with technological progress, the evolution of crimes is becoming more advanced.

One example of a case of corruption among public officers that does not involve corruption in the form of money is ***Mohd Khir bin Toyo v. Public Prosecutor*.**[212] The former Selangor Menteri Besar, Dr. Mohamad Khir Toyo, was charged with corruption for purchasing for his wife and himself two plots of land and a mansion at Shah Alam. A judge at the Federal Court, Tan Sri Jeffrey Tan Kok Wha, stated that the appellant had made a complete estimation of the property and a house, which had a minimum value of RM5 million. He also considered the payment of RM3.5 million

[209] Jenny Balboa and Erlinda M. Medalla., "Anti-Corruption and Governance: The Philippine Experience," in *APEC Study Centre Consortium Conference*, 2006. & Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[210] Ahmad Martadha Mohamed, "Personal Integrity as a Guiding Principle for Fighting Corruption," *Journal of New Government Paradigm* 1, no. 17 (2014): 15.
[211] "Malaysian Anti-Corruption Commission," *Malaysian Anti-Corruption Commission*, http://www.sprm.gov.my/index.php/en/ (accessed June 25, 2017).
[212] [2015] MLJU 513

by the appellant to be insufficient. Tan stated that the appellant's case satisfied all four elements of Section 165 of the Penal Code, including the act of committing a crime while serving as a public servant. Besides, the appellant retained his status as a 'public servant' even during his tenure as the chairman of PKNS (Selangor State Development Corporation). He had corruptly used his position as the Selangor Menteri Besar and Selangor State Development Corporation (PKNS) chairperson to acquire property and land at a price lower than the prevailing market value in the year 2007. The court ruled that the Appellant had a position as a public officer, but did not provide any justification for this finding, except than the Appellant's role as the Menteri Besar of Selangor. The details of the charge state that the Appellant, as Menteri Besar, was a public servant. It remained that the offence as charged was proven beyond reasonable doubt. He was jailed for a year for corruption and lost ownership of his property after the Federal Court upheld the High Court's judgement as provided under Section 165 of the Penal Code. The judge said, the appellant intentionally gained a significant asset for himself and his wife by transferring land, knowing that the amount he paid was insufficient.

The example of the above-mentioned case is classified under different kinds of corruption nowadays. The change in anti-corruption legislation is parallel to the complexity of corruption cases. Corruption is not just about giving or receiving money, but it involves graft in the form of commission, loans, property, and cases involving millions of ringgits, mainly those connected to fund transfers. Other cases

Universiti Utara Malaysia

involve payment, such as holidays or golf club memberships. There are a lot of cases involving people hiding their dirty activities by transferring money through several financial transactions to modify the types of transfers to make it hard to keep track before they make a final withdrawal.[213] Corruption can also be referred to as a hidden crime, as both the recipient and the giver are regarded as criminals. They will both attempt to conceal the crime, and only the intervention of authorities may uncover the truth and ultimately bring legal action.[214]

### 1.8.3 The Fundamental Concept of Illicit Enrichment

Illicit enrichment is considered a fundamental component of an anti-corruption framework by the UNCAC. Article 20 of UNCAC states:

> "*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income."*[215]

Illicit enrichment is a legal mechanism that is aimed at overcoming the difficulties of meeting the burden of proof in offences related to corruption, whether involving

[213] Abu Kassim. Mohamed, "Transforming Anti-Corruption Agency Towards Battling against Corruption," in *International Anti-Corruption Conference. Malaysian Anti-Corruption Commission*, 2015.
[214] "Handbook for Curbing Corruption in Public Procurement," *Transparency International*, last modified 2006, https://www.transparency.org/en/publications/handbook-for-curbing-corruption-in-public-procurement.
[215] Alan Bacarese et al., *Criminalising Illicit Enrichment to Fight Corruption: International Experiences and Lessons Learnt for Viet Nam*, n.d.

bribery, embezzlement, trading in influence, or abuse of office, and has the advantage of focusing primarily on the proceeds of corruption and on targeting the confiscation of illicitly acquired assets. UNCAC and the other leading intentional conventions recognise and wish to promote a law that enables the state to seize the proceeds of corruption. The law aims to prevent those who benefit from corruption from enjoying their illegal gains, thereby removing the underlying motivation for corruption.[216]

Illicit enrichment refers to the acquisition and use of assets, resources, and other benefits that are obtained in the exercise of public office. This may include monies obtained through the receipt of bribes or embezzlement, for example, the use of third parties like children, and the payment of school fees. Illicit enrichment includes the conversion of such assets, as well as any profits they may achieve, and applies to the transfer or mingling of such assets.[217] For some jurisdictions, illicit enrichment requires some audit trail that demonstrates the misuse or abuse of public office and a causal link to the assets. In this sense, illicit enrichment is treated as a classical corruption offence, which requires clear and provable unlawful activity. Whereas in other jurisdictions, the mere presence of income or assets that exceed those likely to

[216] Alan Bacarese et al., *Criminalising Illicit Enrichment to Fight Corruption: International Experiences and Lessons Learnt for Viet Nam*, n.d.
[217] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).

be obtained from legitimate sources is deemed illicit, therefore only based on the unexplained increase in the assets of the public officers.[218]

In Argentina, the government had proposed a bill in 1936 declaring that penalty would be given by the government to public officers who acquire wealth without being able to prove its legitimate source. Until 1964, even though this bill never progressed toward becoming law, similar bills were presented in successive legislatures. Meanwhile in 1988, illicit enrichment in India was originally legislated as an evidentiary value, instead of as an offence. Section 5(3) of the Prevention of Corruption Act 1988 stated an evidentiary legislation allowing the prosecution to validate the act of committing corruption offences such as bribery, misappropriation of public property, trading in influence, and criminal conduct in the mischarge of duty by demonstrating that the suspect had owned assets disproportionate to his known income and did not have a reasonable justification for them. This completely new regulation had caused arguments because, as understood, the prosecution is not obligated to provide evidence of a corrupt offence in a way to get convicted. Besides, Section 5(3) of the Act could not be the basis for a conviction all by itself. [219]

Besides, in Hong Kong, the Hong Kong Independent Commission against Corruption (ICAC) has the authority to order an individual of significant wealth, whose wealth is

[218] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).
[219] Ibid.



Universiti Utara Malaysia

inconsistent with the salary they receive, to disclose their assets. Section 10 of the Prevention of Bribery Ordinance (Chapter 201) (POBO) in Hong Kong outlines[220] two specific offences that can be brought against a defendant. These offences include living beyond one's means and possessing assets that are disproportionate to one's income. The defendant can only be charged with one of the crimes, and not both simultaneously. However, proving the offence of the crime can be challenging.[221] The perpetrators will use typical defences such as gifts, donations, inheriting cash from family, or obtaining income from other sources.[222] Nevertheless, it is important to ensure that the offenders of corruption face severe penalties, regardless of their attempts to become more competent and conceal their illicit wealth. It is necessary for the lawmakers to put extra effort and resources to carry out their responsibilities.[223]

Universiti Utara Malaysia

In 1964, as a consequence of improvements to existing regulations, India and Argentina turned out to be the first countries to criminalise illicit enrichment. In India, the Prevention of Corruption Act 1988 provides the definition of illicit enrichment as the possession of resources that a public official cannot adequately explain or justify, while the Argentina Criminal Code of 1964 describes it as the

[220] Akhbar Satar, *Corruption And Crime in Malaysia: Perception or Reality?*, 1st ed. (Kuala Lumpur: Akhbar & Associates, 2018). 30.
[221] Ibid.
[222] Ibid., 33.
[223] Ibid.

inability to describe the source of any significant increase in wealth for oneself or another party.[224]

Twenty years have passed since Argentina and India criminalised illicit enrichment; since then, Brunei Darussalam,[225] Philipines,[226] Pakistan,[227] and Jordan[228] have enacted similar legislation. Illicit enrichment was criminalised in at least ten countries by 1990, more than twenty by 2000, and more than forty by 2010. Some of these countries basically criminalised measures that already existed under their law of evidence, such as India.[229]

Currently, legislation against illicit enrichment is present in most countries around the world. However, some countries that chose not to criminalise illicit enrichment may have ratified other methods to deal with it. The international legislation that ratified illicit enrichment as one of the corruption crimes is further discussed in Chapter 2.

Universiti Utara Malaysia

[224] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).
[225] Section 12 of the Prevention of Corruption Act 1982 (Chapter 131) Brunei Darussalam.
[226] Republic Act No. 1379, an Act Declaring Forfeiture in Favor of the State Any Property Found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefore Philippines.
[227] The Prevention of Corruption (West Pakistan Amendment) Ordinance 1960 (W.P. Ordinance XVII of 1960), Section 2. This Section inserted Section 5C into the Prevention of Corruption Act 1947 Pakistan.
[228] Jordanian Illicit Enrichment law no. 21 of 2014
[229] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).

### 1.8.4 The Asset Declaration System

As indicated under the problem statement, the basis for making a declaration of assets or property owned by public officers is stated under Regulation 10 of the Public Officers (Conduct and Discipline) Regulation 1993 P.U. (A) 395/1993, read in conjunction with Service Circular No. 3 of 2002. Declarations are made electronically[230] in the Human Resources Management Information System (HRMIS), and disciplinary penalties for non-declaration are provided in accordance with paragraph 29 of the Service Circular.

The Secretariat of the respective organisation verifies declarations to ensure compliance with Circular No. 3 of 2002. However, the verification of the contents of these declarations or outside employment is done on a case-by-case basis at the department level. The head of department endorses these declarations. According to paragraph 28 of Service Circular No. 3 of 2002, all declarations are considered confidential documents.[231]

According to the "Key Performance Index for HRMIS on Asset Declarations," it seems that public officers are mainly complying with the requirements of declaring their assets. MACC officials have stated that the primary purpose of asset

[230] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2016-2021, 158.
[231] Ibid.

declarations is to detect cases of possible illicit enrichment,[232] as they can detect and trace the excessiveness of assets and IE through these declarations.[233]

The asset disclosure laws are essential for identifying illicitly acquired funds and prosecuting corrupt public officers on charges of illicit enrichment. In the absence of evidence to the contrary, any asset of an appointee, elected official, or public officer that has not been appropriately registered in accordance with the Proclamation shall be regarded as unexplained property.[234]

The Asset Declaration System is an approach implemented to control the occurrence of illicit enrichment among public officers. Upon being appointed as a public officer, it is mandatory for them to fully disclose their wealth and liabilities to the government. These incentives require corrupt officers to justify their level of wealth and way of living, making it more challenging and riskier to hide their ill-gotten gains.[235] These initiatives, however, are challenging to implement and monitor.[236]

Disclosure can be a great tool for strengthening public integrity and preventing abuses of power. While governments may put in place a complete limitation on certain kinds of conduct, it is usually complemented with disclosures, which provide

[232] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2016-2021, 159.
[233] Chin Chin Hong, "Reforming the System of Asset Declaration in Malaysia as a Strategy to Combat Corruption" (master's thesis, International Anti-Corruption Academy (IACA), 2016).
[234] Mesay Tsegaye Meskele, "The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law," (master's thesis, Faculty of Law, University of the Western Cape, South Africa, 2012) : 16.
[235] Maria Gonzalez De Asis, *Anticorruption Reform in Rule of Law Programs* (Washington, D.C., 2006).
[236] Ibid.

the measures to monitor and resolve conflicts of interest and to detect and prevent illicit enrichment.

In Malaysia, there is no specific asset declaration Act that requires public officers to disclose their assets. Moreover, there has never been a self-governing organisation with the authority to observe or examine this information. The practice of declaring assets by top government officials only ended at the prime minister's office. Members of parliament and public officers were required to declare their assets to the Prime Minister through the MACC. Subsequently, the rule was improvised under the tenure of former Prime Minister Tun Abdullah Ahmad Badawi. He stipulated that government officers are required to disclose their assets on two occasions within a five-year period (one term).[237] Then, they reviewed the timeframe for this practice and mandated that ministers, deputy ministers, special advisors to ministers, and other officers disclose their assets to the Prime Minister annually. Further, the parliamentarian's code of ethics mandates that parliamentarians must disclose their assets every two years, although it is not mandatory by law.

The public officers working with the government need to declare their assets as soon as they start working. The regularity of declaring assets is dependent on the position of the officers. The head of department needs to declare assets once he has been appointed and once every 3 months. Meanwhile, the officers need to declare once

[237] Lokman, Tasnim, and Masriwanie Muhamading, "GIACC to Handle Asset Declarations," *The New Straits Times*, 2018, https://www.nst.com.my/news/nation/2018/06/378125/giacc-handle-asset-declarations. (accessed September 15, 2018).

every 5 months. The Malaysian Public Service Departments use standard forms to declare their assets.[238] The declaration of assets should be done before and after a person holds a position, with net worth analysis conducted periodically. It is advisable to do it at least once every two years. The public declaration of assets will not cause harm. There should be nothing to hide if they are clean and honest. Compelling all three branches-the executive, legislative, and judicial branches, to disclose their sources of income, assets, debts, and financial interests is an important step forward in the government's commitment to maintaining honesty, transparency, and integrity.[239]

There is a growing international trend requiring public officers to declare their assets and income, as well as, increasingly, the assets and incomes of immediate family members. The main goal of asset declarations is to prevent corruption and detect misappropriation of public funds. This measure increases trust and transparency in the public administration and prevents conflict of interest, illicit enrichment, and the proliferation of unexplained wealth.[240]

Universiti Utara Malaysia

[238] Lokman, Tasnim, and Masriwanie Muhamading, "GIACC to Handle Asset Declarations," *The New Straits Times*, 2018, https://www.nst.com.my/news/nation/2018/06/378125/giacc-handle-asset-declarations. (accessed September 15, 2018).
[239] Akhbar Satar, "Declaration of Assets in All Branches of Govt A Huge Step Forward," *The New Straits Times*, September 2022, https://www.nst.com.my/opinion/columnists/2022/09/833569/declaration-assets-all-branches-govt-huge-step-forward
[240] Ibid.

## 1.9 Outlines of Chapters

Chapter One of this research introduces the reader to the background of this study. The sections in Chapter 1 are divided into: introduction (the background of the study), problem statement, research questions, research objectives, significance of the study, research methodology, limitations of the study, and lastly, a literature review.

Meanwhile, Chapter Two discusses the definition of terms, including the conceptual definitions of corruption, illicit enrichment, and public officials in Hong Kong, Singapore, and Malaysia. The discussion continues with the historical background of corruption, specifically the development of anti-corruption laws in Malaysia, the types of corruption, the concept of wilful blindness, and the broken window theory in greater detail. It also covers Malaysian initiatives to combat corruption and illicit enrichment. Lastly, the chapter concludes the topic.

Chapter Three further discusses international initiatives to fight corruption and illicit enrichment. The next section of the chapter examines the regulatory legal frameworks for illicit enrichment in Singapore, Hong Kong, Argentina, and Egypt, along with their experiences regarding the offence of illicit enrichment. The discussion then continues with an overview of the international legal framework on asset declaration. The last part of this chapter presents the analysis and findings for Research Question and Research Objective No 3.

Chapter four then continues with the analysis and findings for Research Question 1 and Research Objective No. 1. The analysis and findings were derived from interview data, legislation, and other sources of literature. The conceptual framework for Research Question 1 was also developed by the researcher.

Chapter five discusses the analysis and findings for Research Question and Research Objective No. 2. The analysis and findings were derived from interview data, legislation, and other sources of literature. The conceptual framework for Research Question 2 was also developed by the researcher.

The final chapter, Chapter Six, includes the recommendations and conclusion of the study, which address Research Question and Research Objective No. 4. In this chapter, the researcher also provides recommendations and suggestions that are suitable and feasible for improving the situation of Section 36 of MACCA and asset declaration in Malaysia. The last section presents the conclusion of the study.

Universiti Utara Malaysia

# CHAPTER TWO

# DEFINITION, CONCEPTS, HISTORICAL BACKGROUND OF CORRUPTION, THEORIES AND INITIATIVES TO FIGHT CORRUPTION AND ILLICIT ENRICHMENT FROM A MALAYSIAN PERSPECTIVE

## 2.0 Introduction

This second chapter explains the definitions of key terms, including corruption, illicit enrichment, public officer, and financial disclosure/asset declaration. It also covers the conceptual definitions of corruption, illicit enrichment, and public officials from other countries. Additionally, it provides a historical background on corruption (including the development of anti-corruption laws in Malaysia), types of corruption, the concept of wilful blindness, the broken window theory, and Malaysian initiatives to combat corruption and illicit enrichment. Finally, the chapter concludes with a summary of these topics.

## 2.1 Definition of Terms

Since the main subject of the study is the issue of criminalising illicit enrichment as a corruption crime in Malaysia through the Malaysian Anti-Corruption Act 2009, the study focuses on the following definitions of corruption, illicit enrichment, public officers, and asset declaration:



Universiti Utara Malaysia

### 2.1.1 Corruption

The definition of corruption can be categorised into different types. In this research, the definition is divided into two types: a definition for policy purposes and a definition from a legal perspective.

i) Definition for policy purposes

Basically, the concept of corruption has yet to have a definition that is comprehensive and universally recognised. The most common type of definition that both experts and practitioners agree on is "corruption is the use or misuse of public office for private gain."[241]

The United Nations Convention against Corruption (UNCAC) provided the definition of corruption as "a crime committed by public officials or private officials who abuse their position to get an advantage for someone else or for themselves."

The World Bank defines corruption as the abuse of public office for private gain.[242] Besides, Transparency International also defined corruption as "the abuse

[241] J. Edgardo Campos and Sanjay Pradhan, *The Many Faces of Corruption : Tracking Vulnerabilities at the Sector Level* (Washington, D.C.: The International Bank for Reconstruction and Development / The World Bank, 2007).
[242] Vinay Bhargava, "Curing the Cancer of Corruption," *World Bank Global Issues Seminar Series,* 2006, http://siteresources.worldbank.org/EXTABOUTUS/Resources/Ch18.pdf

of entrusted power for private gain."[243] The abuse of entrusted power for personal benefit from a broad perspective is a behaviour which deviates from the formal duties, ethical principles, and accepted norms of public role for the purpose of attracting pecuniary or status gains.[244]

Besides, the definition of corruption that is commonly used is the act of giving or receiving any gratification or reward in the form of cash or something else of high value for performing a task in relation to a person's job description.[245]

The most famous definition out of many public-office-centered definitions comes from the definition of Joseph Nye in 1967 which had been pointed out by Farrales:

> [Corruption]……refers to actions that are against the official responsibilities of a public position (whether elected or appointed) in order to achieve personal riches or status for oneself, close family members, or a private group. It also involves violating regulations that prohibit the use of certain types of private influence.[246]

Universiti Utara Malaysia

[243] "What is Corruption," *Transparency International*, http://www.transparency.org/what-is-corruption/#define (accessed March 4, 2017).
[244] Ettah B. Essien, "Corruption and Economic Development in Nigeria: A Materialistic Observation," *Journal of Economics and Sustainable Development* 3, no. 14 (2012): 34–48.
[245] "Malaysian Anti-Corruption Commission," *Malaysian Anti-Corruption Commission*, http://www.sprm.gov.my/index.php/en/ (accessed June 25, 2017).
[246] Mark Jorgensen Farrales, "What Is Corruption? A History of Corruption Studies and the Great Definitions Debate" (2005): 17.

This definition by Nye basically means that corruption is defined as actions such as unethical behaviour or immoral activity that deviate from the prescribed duties associated with public positions. Such actions are driven by personal or private-regarding benefits, which may include monetary, personal gain, or status-enhancing benefits. Corrupt practices involve acts that go against laws and policies that prohibit the misuse of influence based on private interests. This expanded definition consists of all elements related to the main areas of this study, which are corruption, public officials, illicit enrichment, and the increase of wealth, and it provides a more comprehensive understanding of corruption.

ii) Definition From Legal Perspectives

The MACCA and the Penal Code (Act 574) do not use the term "undue advantage" but "gratification." Gratification is defined under Section 3 of MACCA as:[247]

a) *"Money, donation, loan, fee, reward, valuable security, any property or whether movable or immovable, monetary profit, or any other similar advantage;"*
b) *"Any office, dignity, employment, contract of employment or services, and consent to give employment or render services in any way;"*

[247] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.

c) *"Any payment, release, discharge or liquidation of any loan, obligation or other liability;"*

d) *"Any kind of valuable consideration such as discount, commission, rebate, bonus, deduction or percentage;"*

e) *"Any forbearance to demand any money or money's worth or valuable thing;"*

f) *"Any other service, comprising protection from any penalty or disability suffered or being detained or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty;" and*

g) *"Any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the previous paragraphs (a) to (f)."* [248]

The definition of corruption or the word 'corrupt', is further discussed by the Federal Court in the case of ***Public Prosecutor v. Datuk Haji Harun Bin Haji Idris.***[249] The term 'corrupt' refers to engaging in an action with the knowledge that it is morally wrong, accompanied by evil feelings and intentions, and deliberately performing an act that is prohibited by law. The concept of 'corrupt' revolves around the topic of intention. If it can be established that the individual's actions or inactions were motivated by malicious intent or a guilty state of mind, then they are legally responsible.

[248] Section 3 of the Malaysian Anti-Corruption Commission Act 2009.
[249] [1977] 1 MLJ 15.

Furthermore, according to Harun Hashim, the former first director of the Anti-Corruption Agency, bribery is described as a secret deal between two individuals, and if the secrecy is breached, it is likely the giver who disclosed it.[250] There are a few definitions of corruption given by the scholars, the World Bank, the law, the Cambridge dictionaries, and the court. Those definitions of corruption can be grouped into several categories: definitions according to legal perspectives and definitions according to policy purposes. Other than this common definition, there are various meanings of corruption, as there are manifestations of the issue itself. These definitions differ depending on social, legal, or other features. There is no mutual agreement on what exact acts should be included or excluded, even within the provided definitions.[251]

Universiti Utara Malaysia

Furthermore, the Malaysian legal concept of gratification is compatible with the widely accepted concept of corruption, which includes both financial and non-financial gain.[252] The definitions of what constitutes corruption remain to be set in stone since there are different statements by scholars in so many sectors that are made regarding definitions of corruption and its related activities that vary across cultural and geological bounds. Several scholars have provided definitions of corruption, often describing it as the improper exercise of authority within an

[250] Tunku Abdul Aziz, "International Case Study: Stamping Out Corruption in Malaysia," *113th International Training Course Visiting Experts' Papers* (2002): 393–399.
[251] *Corruption: A Glossary of International Criminal Standards Organisation* (Organisation For Economic Co-Operation and Development, 2007).
[252] Ibid.

organisation which could be due to the several definitions of corruption.[253] Nevertheless, the term remains unchanged, referring to the act of giving or receiving something with the intention of engaging in criminal activities as defined by laws or regulations pertaining to everyday professions.[254]

Transparency International defines corruption in a manner that is relevant to this study's purpose as "the misuse of entrusted power for private gain." Private gain must be construed broadly, where it includes the unlawful acts of public-service officials, including politicians and public officers, who use their positions to create chances for money and asset diversion from the government to themselves and their fellow conspirators.[255]

Out of the many definitions of corruption discussed above, this thesis adopted Joseph Nye's definition of corruption in 1967, which consists of all elements related to the main areas of this study. Furthermore, the definition is very clear and straightforward, and it completely reflects the meaning of corruption.

[253] Daniel Francis, "Taking Back Missed Opportunities Fairly : The Impact of Organizational Corruption Towards Businesses in Malaysia," *International Journal of Commerce, Business and Management (IJCBM)* 2, no. 2 (2013): 78–84.
[254] Ahmad Martadha Mohamed, "Personal Integrity as a Guiding Principle for Fighting Corruption," *Journal of New Government Paradigm* 1, no. 17 (2014).
[255] Petter. Langseth, "Prevention: An Effective Tool to Reduce Corruption," in *ISPAC Conference.* (Vienna: United Nation Office for Drug Control and Crime Prevention, 1999).

### 2.1.2 Illicit Enrichment

According to the law dictionary, the term illicit is defined as unlawful, not authorised by law, contrary to law, or illegal.[256]

Meanwhile, the term enrichment comes from the root word enrich, which means to improve the quality of something by adding something else.[257] Enrichment is the action of improving or enhancing the quality or value of something, or the process of making someone wealthy or wealthier.[258] Besides, the definition of illicit enrichment is commonly referred to as "disproportionate wealth" or "inexplicable wealth."[259]

Illicit enrichment is defined in Article 20 of the United Nations Convention Against Corruption (UNCAC) as:

> *"A crime that shows a significant increase in the assets of a public official, which he or she cannot reasonably explain in relation to his or her lawful income and it is committed intentionally."*

Universiti Utara Malaysia

[256] "The Term of Illicit," *The Law Dictionary*, https://thelawdictionary.org/?s=ILLICIT (accessed August 5, 2018).
[257] "The Definition of Enrichment," *Cambridge University Press*, https://dictionary.cambridge.org/dictionary/english/enrichment (accessed December 12, 2018).
[258] "The Definition of Enrichment," *Oxford University Press*, https://www.oxfordlearnersdictionaries.com/definition/english/enrich (accessed January 21, 2019).
[259] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).

The aforesaid definition given by UNCAC showed a few important mechanisms that must be included in order for the accused to be found guilty.[260] The components of illicit enrichment crime are "significant increase in assets," "assets," and "intentionally." The first component, which is "significant increase in assets," is not defined specifically under UNCAC. The word "significant" is relative to the legitimate income.[261] The term 'significant' must be clearly defined by the UNCAC or any other country that criminalises illicit enrichment. This is due to the difficulty of the prosecuting agency in proving how the assets were illicitly acquired and how much of the assets or wealth acquired by the public officers are considered illegal. This issue must be included in the internal guidelines of any country's legislation and must be determined reasonably.[262] Then, the term "assets" is often widely defined as positive increases in wealth. Legislation sometimes refers to "standard of living" or "lifestyle," but these issues somehow trigger an investigation rather than an element of the offence.

Universiti Utara Malaysia

The last component is "intentionally," where Article 20 of UNCAC states that illicit enrichment is an offence if it is committed intentionally. The element of intent can be assumed from the facts surrounding the case. For instance, in order to get funds, the accused may be required to create bank accounts, whereas to use money, the accused may need to actively engage in banking activities, such as signing documents for

[260] Mouhamed Bachir Diop, "National Mechanisms against Illicit Enrichment Case Study: Senegal," *Journal of Justice* 1, no. 1 (2017): 1–12.
[261] Karen Zadoyan et al., *International Experience of the Criminalisation of Illicit Enrichment, and the Possibilities of Criminalising Illicit Enrichment in Armenia*, 2014, 7.
[262] Ibid.

property acquisition and so forth. This is not an offence involving strict liability, if the accused is able to prove their ignorance, then that is a valid defence. For instance, an individual may unintentionally transfer funds into their account without their knowledge, or they may have other common defences like wealth inherited from family members or donation money.[263]

Another definition of illicit enrichment in international conventions is from the Inter-American Convention against Corruption (IACAC). Article IX of the IACAC provides a definition of illicit enrichment as follows:

> *"A significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions."*

Universiti Utara Malaysia

The definitions from UNCAC and IACAC show the differences in definitions of illicit enrichment in international conventions. International conventions aim to correlate the components of wrongdoing across states, but it can be seen that differences still exist between the key relevant conventions.[264] However, despite these differences in the definition of illicit enrichment, there are more similarities than differences across the national approaches chosen.[265] This is to ensure that the primary goal is to focus on the fundamental misconduct, rather than the name of the

[263] Karen Zadoyan et al., *International Experience of the Criminalisation of Illicit Enrichment, and the Possibilities of Criminalising Illicit Enrichment in Armenia*, 2014, 7.
[264] Mouhamed Bachir Diop, "National Mechanisms against Illicit Enrichment Case Study: Senegal," *Journal of Justice* 1, no. 1 (2017): 2.
[265] Ibid.

wrongdoing itself.[266] Therefore, an illicit enrichment offense is only based on the inexplicable growth in a public officer's properties.[267]

Based on all the definitions provided above, this thesis has employed and adopted the UNCAC's definition of illicit enrichment. This definition is clear and accurately represents the elements of illicit enrichment discussed in this study, which include the public official, period of interest, increase in wealth, failure of proof, and criminal intention.[268]

### 2.1.3 Public Officer

Like any other country, the Malaysian public service is the strength of its government.[269] The terms public official, public servant, public employee, civil servant, and government worker are often used interchangeably as synonyms for public officer. The distinction between a private and public organisation lies in whether it is owned and/or controlled by private individuals or by public authorities.[270]

[266] Mouhamed Bachir Diop, "National Mechanisms against Illicit Enrichment Case Study: Senegal," *Journal of Justice* 1, no. 1 (2017): 2.
[267] Ibid.
[268] Mohannad Ahmad Musa Abu-Morad, "An Analysis of the Illicit Enrichment Law and Prosecution Issues in Jordan" (PhD diss., Universiti Utara Malaysia, 2016), 4.
[269] Malaysian Bar, *Memorandum for the Reform of the Malaysian Anti-Corruption Commission*, 2015.
[270] Leila Pathirane and Derek W. Blades, "Defining and Measuring the Public Sector: Some International Comparisons," *Review of Income and Wealth* 28, no. 3 (1982): 262.

A public body is all institutions that are not privately controlled and operated but rather funded, administered, and established by the government on the public's behalf. The public body comprises institutions and sectors where the public has control over them, as opposed to private owners, and whose objectives involve the provision of services, where profit-making is not the main purpose.[271]

The Malaysian Legislations have provided some guidelines to the meaning and definition of public officer in its few statutes, such as the Federal Constitution, Interpretation Acts 1948 and 1967 (Act 388), and MACC Act 2009.

According to Section 3 of the Interpretation Acts 1948 & 1967 (Act 388), public officer means a person legally holding, acting in or exercising the roles of a public office.[272] Furthermore, "officer of a public body" is defined under Section 3 of the MACCA, as any person who is a member, an officer, an employee or a servant of a public body,[273] and includes a member of the administration,[274] a member of Parliament, a member of a State Legislative Assembly,[275] a judge of the High Court, Court of Appeal or Federal Court, and

[271] Malaysian Bar, *Memorandum for the Reform of the Malaysian Anti-Corruption Commission*, 2015.
[272] Section 3 of the Interpretation Acts 1948 & 1967 defined "public office" as an office in any of the public services.
[273] "Public body" under Section 3 of the MACCA includes the Government of Malaysia, the Government of a State, any local authority and any other statutory authority, and etc.
[274] Article 160(2) of Federal Constitution, "member of the administration" means, in relation to the Federation, a person holding office as Minister, Deputy Minister, parliamentary Secretary or political Secretary and, in relation to a State, a person holding a corresponding office in the State or holding office as member (other than an official member) of the executive Council.
[275] Section 3 of the MACCA defined "member of a State Legislative Assembly" as an officer of a public body who is a member of a State Executive Council by virtue of his office.

any person receiving any remuneration[276] from public funds, and, where the public body is a corporation sole, includes the person who is incorporated.

There is no definition of public officer that was provided under Article 132 of the Federal Constitution, but it provides the component of Public Service as comprising of the public service of each State, the general public service of the Federation, the joint public services, the judicial and legal service, police force, armed forces and the education service.[277]

The universal definition of public official is defined in Article 2 of the UNCAC as follows:

> *"(a) Public official" means: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority;*
> *(ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;*
> *(iii) any other person defined as a "public official" in the domestic law of a State Party. However, in relation to certain measures outlined in chapter II of this Convention, the term "public official" may refer to any individual who carries out a public duty or*

[276] Article 160 of the Federal Constitution provides the definition of "remuneration" that includes salary or wages, allowances, pension rights, free or subsidized housing, free or subsidized transport, and other privileges capable of being valued in money.
[277] Article 132, Federal Constitution of Malaysia.

*delivers a public service, as defined by the domestic legislation of the State Party and as applied in the relevant legal area of that State Party."*

Basically, the definition of public officer from Interpretation Acts 1948 and 1967 (Act 388) and MACC Act 2009 extends to anyone serving in the public interest, carrying the name of a public servant, and chosen by the government. This definition clearly describes the function of a public officer who has responsibilities for carrying out their public duties. Therefore, throughout this thesis, the researcher uses the term 'public officer,' which was derived from Interpretation Acts 1948 and 1967 and the MACC Act 2009 which carry the meaning of a public officer for the purpose of this research study.

Universiti Utara Malaysia

2.1.4 Financial Disclosure or Asset Declaration

The legal phrase in Malaysia does not have a specific definition for "asset declaration." In fact, the terms are interchangeably used to refer to financial disclosure. The Cambridge Dictionary defines financial disclosure as the act of giving the details of the financial status of a person or company to the government, investors, or banks. Besides, the United Nations Convention Against Corruption also defines financial disclosure in Article 8 (5) as:

*"Systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or*

*benefits from which a conflict of interest may result with respect to their functions as public officials."*

To ensure integrity and transparency,[278] asset declarations are designed to provide public officers with a transparent system in which to disclose their assets and interests. It also has the ability to identify power abuse and its conversion into unexplained wealth, and it may also be used to expose bribery and other types of corruption, especially illicit enrichment.[279] This indirectly prevents public officers from committing any corruption crimes.[280]

Since there is no specific legal term for 'asset declaration' in Malaysia, the researcher uses the definition of financial disclosure by the UNCAC as a reference throughout this thesis because it provides a clear illustration of the definition and concept of financial disclosure or the asset declaration system as a whole. Besides, the terms financial disclosure and asset declaration carry the same meaning, and the researcher uses the term asset declaration throughout the writing of this thesis.

[278] Shamshun Baharin Mohd Jamil, *Asset Declaration in Malaysia*, 2018.
[279] "Asset Declarations: An Effective Tool to Fight Corruption," *Transparency International* http://www.transparency.org/whatwedo/publication/working_paper_1_2014_asset_declarations_an_effective_tool (accessed May 18, 2019).
[280] Shamshun Baharin Mohd Jamil, *Asset Declaration in Malaysia*, 2018.

2.2 Conceptual definitions of Corruption, Illicit Enrichment, and Public Officials in Hong Kong, Singapore, and Malaysia

2.2.1 Corruption

Under the Prevention of Bribery Ordinance (Chapter 201) (POBO) in Hong Kong, the term 'corruption' is being referred to as an advantage. The term 'advantage' used by the act means:

> *(a) "any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;*
> *(b) "any office, employment or contract;*
> *(c) "any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;*
> *(d)"any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;"*
> *(e) "the exercise or forbearance from the exercise of any right or any power or duty;" and*
> *(f) "any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e)."*

Besides, the Prevention of Corruption Act (Chapter 241) in Singapore defines corruption as gratification,[281] which includes -

[281] PP v. Tay Sheo Tang Elvilin [2011] 4 SLR 206

(a) *"money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;"*

(b) *"any office, employment or contract;"*

(c) *"any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part;"*

(d) *"any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and*

(e) *"any offer, undertaking or promise of any gratification within the meaning of paragraphs (a), (b), (c) and (d)."*

Meanwhile, in Malaysia, the definition of corruption is defined as gratification, as stated in the literature review provided under Chapter 1. Further explanation on the definition of corruption can be seen in the case of ***Badrul Hisham Bin Hashim @ Ishak v. Public Prosecutor (No. 2) [2020] MLJU 358***. According to the judge in this case, the act of corruption can be classified as 'gratification' according to the definition provided in Section 3 of the MACCA, which covers various categories. In this particular case, the judge deemed the sum of money received by the defendant to fall within the classification of 'money' as classified in the gratification definition. Additionally, this section also classifies a monetary offer, undertaking, or promise for money as distinct from the money itself.

The definition of gratification in the MACC Act is consistent with the definition found in the Prevention of Bribery Ordinance (Chapter 201) (POBO) in Hong Kong and the Prevention of Corruption Act (Chapter 241) in Singapore. The similarity is due to the fact that Malaysia's anti-corruption legislation was modelled after top anti-corruption agencies such as the Independent Commission Against Corruption (ICAC) and the Corrupt Practices Investigation Bureau (CPIB). Hong Kong adopted Singapore's legal framework, and Malaysia, in turn, adopted elements from Hong Kong's regulatory legal framework into its anti-corruption laws. Nevertheless, a comprehensive and generally accepted definition of corruption remains unclear. The term corruption that has gained mutual agreement among researchers and practitioners is, "the use or abuse of public office for private gain."[282]

Based on the previously discussed definition of corruption, it can be summarised that there is no definition of corruption in the MACC Act 2009 [Act 694][283] and the said Act or any other provisions do not contain a single word of the term 'corruption.' However, the Act provides for the term 'gratification' which represents the meaning of corruption as found in the Prevention of Corruption Act (Chapter 241) in Singapore. The definition of corruption in Malaysia should be refined, and the Malaysian authorities need to acknowledge that corruption or gratification involves not solely bribery and financial gains, but also the misuse of entrusted power for

[282] J. Edgardo Campos and Sanjay Pradhan, *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level* (Washington, D.C.: The International Bank for Reconstruction and Development / The World Bank, 2007).
[283] Interview with Respondent 4, Deputy Public Prosecutor. Attorney General Chamber. (January 21, 2020)

personal gain, the terminology commonly employed by UNCAC and Transparency International. Certain scholars, such as Huntington,[284] define corruption as the behaviour of public officials that deviates from accepted norms to achieve their personal goals.[285] Furthermore, corruption includes immoral and dishonest behaviour, with corrupt individuals abusing their power to be involved in unethical acts for financial gain.

### 2.2.2 Illicit Enrichment

Besides, illicit enrichment is provided under Section 10 of the Prevention of Bribery Ordinance (Chapter 201) (POBO) Hong Kong as follows:

> *"10. Possession of unexplained property"*
>
> *"(1) Any person who, being or having been a prescribed officer-*
>
> *(a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or"*
>
> *(b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments, shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence."*

[284] Samuel P. Huntington, "Modernization and Corruption," Cited in Arnold J. Heidenheimer and Michael Johnston. *Political Corruption: Concepts & Contexts*, Third Edit. (New Brunswick, New Jersey.: Transaction Publishers, 2002).
[285] Ettah B. Essien, "Corruption and Economic Development in Nigeria: A Materialistic Observation," *Journal of Economics and Sustainable Development* 3, no. 14 (2012).

*"(2) Where a court is satisfied in proceedings for an offence under subsection (1)(b) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused."*

Singapore does not define illicit enrichment expressly, but Section 21 of the Prevention of Corruption Act (Chapter 241) states as follows;

*"21. Public Prosecutor's powers to obtain information".*

*"(1) The Public Prosecutor may give notice in writing, in the manner of any investigation or proceeding with respect to any offence by any individual in the Government service or any public organisation under this Act;"*

*"(a) require that person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by that person and by the spouse, sons and daughters of that person, and specifying the date on which each of the properties enumerated was acquired whether by way of purchase, gift, bequest, inheritance or otherwise;*

*(b) "require that person to furnish a sworn statement in writing of any money or other property sent out of Singapore by him, his spouse, sons and daughters during such period as may be specified in the notice;"*

*(c) "require any other person to furnish a sworn statement in writing enumerating all movable or immovable property belonging*

*to or possessed by that person where the Public Prosecutor has reasonable grounds to believe that the information can assist the investigation;"*

*(d) "require the Comptroller of Income Tax to furnish, as specified in the notice, all information available to the Comptroller relating to the affairs of that person or of the spouse or a son or daughter of that person, and to produce or furnish, as specified in the notice, any document or a certified copy of any document relating to that person, spouse, son or daughter which is in the possession or under the control of the Comptroller;"*

*(e)" require the person in charge of any department, office or establishment of the Government, or the president, chairman, manager or chief executive officer of any public body to produce or furnish, as specified in the notice, any document or a certified copy of any document which is in his possession or under his control;"*

*(f) "require the manager of any bank to give copies of the accounts of that person or of the spouse or a son or daughter of that person at the bank."*

*(2) "Every person to whom a notice is sent by the Public Prosecutor under subsection (1) shall, notwithstanding the provisions of any written law or any oath of secrecy to the contrary, comply with the terms of that notice within such time as may be specified therein and any person who wilfully neglects or fails so to comply shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding one year or to both."*

Universiti Utara Malaysia

Meanwhile, Malaysia has no clear and direct definition of illicit enrichment under our law, but an assumption can be made of the underlying meaning of illicit enrichment under Section 36 of the MACC Act as follows -

*"36. Powers to obtain information;"*

*"(1) Notwithstanding any written law or rule of law to the contrary, an officer of the Commission of the rank of Commissioner and above, if he has reasonable ground to believe, based on the investigation carried out by an officer of the Commission, that any property is held or acquired by any person as a result of or in connection with an offence under this Act, may be written notice -*

*"(a) require that person to furnish a statement in writing on oath or affirmation-*

*i)" identifying every property, whether movable or immovable, whether within or outside Malaysia, belonging to him or in his possession, or in which he has any interest, whether legal or equitable, and specifying the date on which each of the properties so identified was acquired, whether by way of any dealing, bequest, devise, inheritance, or any other manner;"*

*ii) "identifying every property sent out of Malaysia by him during such period as may be specified in the notice;"*

*iii) "setting out the estimated value and location of each of the properties identified under subparagraphs (i) and (ii), and if any of such properties cannot be located, the reason therefore;"*

*(iv) "stating in respect of each of the properties identified under subparagraphs (i) and (ii) whether the property is held by him or by any other person on his behalf, whether the property has been transferred, sold to, or kept with any person, whether the property*

Universiti Utara Malaysia

*has been diminished in value since its acquisition by him, and whether the property has been commingled with other property which cannot be separated or divided without difficulty;"*

*(v) "setting out all other information relating to his properties, business, travel, or other activities as may be specified in the notice;" and*

*(vi) "setting out all his sources of income, earnings or assets;"*

*"(2) Every person to whom a notice is sent by the officer of the Commission of the rank of Commissioner and above under subsection (1) shall, notwithstanding any written law or rule of law to the contrary, comply with the terms of the notice within such time as may be specified therein, and any person who wilfully neglects or fails to comply with the terms of the notice commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years and to a fine not exceeding one hundred thousand ringgit."*

*"(3) Where the officer of the Commission of the rank of Commissioner and above has reasonable grounds to believe that any person who has been served with the written notice referred to in subsection (1) owns, possesses, controls or holds any interest in any property which is excessive, having regard to his present and past emoluments and all other relevant circumstances, such officer of the Commission may by written direction require him to furnish a statement on oath or affirmation explaining how he was able to own, possess, control or hold such excess and if he fails to explain satisfactorily such excess, he commits an offence and shall on conviction be liable to (a) imprisonment for a term not exceeding twenty years; and (b) a fine which is not less than five times the value of the excess, if the excess is capable of being valued, or ten*

Universiti Utara Malaysia

*thousand ringgit, whichever is the higher."*

From the section provided above, the main statute on corruption in Malaysia, which is the MACC Act 2009 [Act 694] does not explicitly define illicit enrichment. Section 36 outlines the issuance of notice when the officer has the ground to believe based on investigation that the property acquired by the accused was in connection with the offence under the same Act as explained in the problem statement. Section 36(3) of the MACCA covers the elements of the crime of illicit enrichment. No definition of illicit enrichment is provided in Section 36, but the underlying elements of illicit enrichment are implicitly stated in Section 36(3), which are *(1) "any person who owns, possesses, controls, or holds any interest in property that is excessive, considering their current and past income and other relevant circumstances, and (2) the requirement for the person to explain how they acquired such excess. If they fail to provide a satisfactory explanation, they commit an offence*." Section 36(3) comprises two of the five elements of illicit enrichment, however, only these two elements align with the offence and elements of illicit enrichment. Nonetheless, neither of the two elements specifically indicated that the possession of unexplained property constitutes a criminal offence.[286] This is further elaborated in Chapter four, under subtopic 4.1.1

Universiti Utara Malaysia

[286] Cynthia Gabriel, "For Tracking Unexplained Wealth, C4 Recommends Tightening of MACC Act," *Malaysia Kini*, 2017, https://www.malaysiakini.com/letters/379694 (accessed June 15, 2018).

2.2.3 Public Official

Section 1 of the Prevention of Bribery Ordinance (Chapter 201) (POBO) defines "public servant" as: -

> *"Any prescribed officer and also any employee of a public body"*

In Singapore, Section 2 of Prevention of Corruption Act (Chapter 241) under Interpretation defines "public body"[287] as: -

> *"Any corporation, board, council, commissioners or other body which has power to act under and for the purposes of any written law relating to public health or to undertakings or public utility or otherwise to administer money levied or raised by rates or charges in pursuance of any written law."*

And section 4 of the same Act stated that: -

> *"The public servants in the meaning of the Penal Code shall be deemed as the Director, deputy directors, special investigators, assistant directors of the CPIB."*

In Malaysia, "public officer" is defined under Interpretation Acts 1948 & 1967 (Act 388), as follows:[288]

> *"a person lawfully holding, acting in or exercising the functions of a public office."*

[287] Yusof Bin A. Samad v. PP [2000] 3 SLR(R) 115
[288] The definition of public officer is also discussed above in subtopic 2.1.3.

Furthermore, the interpretation in Section 3 of the MACC Act 2009 [Act 694] defines an "officer of a public body" as: -

> *"Any person who is a member, an officer, an employee or a servant of a public body, and includes a member of the administration, a member of Parliament, a member of a State Legislative Assembly, a judge of the High Court, Court of Appeal or Federal Court, and any person receiving any remuneration from public funds."*

In the case of ***PP v. Dato' Sri Mohd Najib Bin Abdul Razak [2020] MLJU 1254; [2020] 11 MLJ 808***, the term "public body officer" includes, but is not limited to, *"a member of Parliament, a member of the administration, and anyone who receives remuneration from the funds of the public."*

Based on the discussion of the conceptual definitions, Hong Kong has a specific clause penalising illicit enrichment, while Singapore and Malaysia do not have a direct offence against illicit enrichment. However, if there is suspicion of a violation under the Act and an investigation is underway, the public prosecutor may order the suspect to disclose the source of their wealth, as further discussed in Chapter 3 of this thesis.

Universiti Utara Malaysia

2.3 Historical Background of Corruption.

Corruption is a multifaceted phenomenon that transcends national boundaries and impacts every country globally.[289] It is generally admitted that corruption is an age-old problem and that all human societies affected by corruption.[290] It impacts both those who govern and those who are governed.[291] Despite the fact that this immoral phenomenon happens in all nations, big and small, rich and poor, its negative effects are most severe in the developing world. That is why corrupt offences such as bribery and other forms of abuse of public functions for personal profit have been made illegal in nearly all legal systems.[292]

Corruption was not a major concern when Malaya gained independence in 1957.[293] Both British and Malayan officers upheld the utmost levels of integrity and the respected traditions of the Malayan public service, showing overall incorruptibility. They lived well within their means.[294] Malaya adopted a government system modelled after the Westminster model, with a few changes that is still largely in use today. Additionally, it adopted an economy focused on British colonial mercantile interests, focusing mainly on exporting rubber and tin. Malaya or Malaysia has a long history of economic prosperity compared to other Asian countries. However, the

[289] Ettah B. Essien, "Corruption and Economic Development in Nigeria: A Materialistic Observation," Journal of Economics and Sustainable Development 3, no. 14 (2012): 36.
[290] Syed Hussein Alatas, The Sociology of Corruption: The Nature, Function, Causes and Prevention of Corruption (Times Books International, 1968).
[291] Ettah B. Essien, "Corruption and Economic Development in Nigeria: A Materialistic Observation," Journal of Economics and Sustainable Development 3, no. 14 (2012): 36.
[292] Roberto de Michele, "The Role of the Anti-Corruption Office in Argentina: Lessons on Corruption and Anti-Corruption : Policies and Results," *The Journal of Public Inquiry* (2001): 17.
[293] Tunku Abdul Aziz, "International Case Study : Stamping Out Corruption in Malaysia," *113th International Training Course Visiting Experts' Papers* (2002): 393.
[294] Ibid.

wealth during that time was centred on agriculture and did not provide the same chances for corruption as existed in the 1970s.[295]

When the traditional societies of Asia came into contact with Western imperialism, many of them were already affected by corruption. The influence of modernisation does not come in at all. In certain cases, it worsened the situation, but the corruption that followed has always been continuous with the past. Modernisation and the rapid social changes accompanying it, when they invite corruption, do so in an already corrupt context. No doubt new problems are created, and new forms of corruption emerge, but they do not justify an emphasis on these factors to the neglect of historical factors which may be more significant in an explanation. [296]

The government decided to establish a special bureau to fight corruption in the 1970s after observing an upward trend in public attitude towards unethical behaviour. Later on, this bureau changed to become the Anti-Corruption Agency (ACA) of today. Interestingly, the ACA has a longer history than institutions like the ICAC in Hong Kong, which is frequently cited as the world's most effective anti-corruption agency. This shows that political determination is still essential in the fight against corruption.[297]

Universiti Utara Malaysia

[295] Tunku Abdul Aziz, "International Case Study: Stamping Out Corruption in Malaysia," *113th International Training Course Visiting Experts' Papers* (2002): 393.
[296] Syed Hussein Alatas, *The Sociology of Corruption: The Nature, Function, Causes and Prevention of Corruption* (Times Books International, 1968).
[297] Tunku Abdul Aziz, "International Case Study: Stamping Out Corruption in Malaysia," *113th International Training Course Visiting Experts' Papers* (2002): 393.

The New Economic Policy (NEP)[298] was introduced as an alternative to the race riots in Kuala Lumpur in 1969 between the Malays and the Chinese, involving extensive social and economic restructuring. The NEP has mostly achieved its primary social and economic goals. The establishment of a number of governmental institutions with broad discretionary power to carry out hundreds of socioeconomic initiatives led to certain predictable outcomes. Like many government-driven programmes globally, the most persistent obstacle was corruption, both grand and petty, which was usually functioning without the benefit of effective central coordination.[299] By the late 1970s, corruption had grown into a very important part of the national business picture.

Corruption and abuse of power had escalated to an unprecedented level, surpassing the usual standards of behaviour. The New Straits Times, Malaysia's oldest English language daily, decided to publish an editorial on the topic:

> *"There was a time when Malaysians could feel superior while learning about corruption in other developing nations. The pride was completely justified as every area of public administration was clean, misuse of power was non-existent, departmental morale was good, and public confidence was strong. Maybe there was a tendency to overlook or underestimate this situation. The current circumstances have prompted several calls to action from the*

[298] Tunku Abdul Aziz, "International Case Study: Stamping Out Corruption in Malaysia," *113th International Training Course Visiting Experts' Papers* (2002): 393.
[299] Ibid., 394.

*different rulers, the Prime Minister, his deputy, and other ministers and department heads."*[300]

Besides, according to the Global Financial Integrity (GFI), Malaysia had a significant flow of illegal and illicitly obtained funds from 2006 to 2015.[301] According to research conducted by Global Financial Integrity, a think group based in Washington, Malaysia, was placed third in illicit financial outflows, following China and Mexico.[302]

Illicit financial flows (IFF) measure the amount of money that is illegally earned or transferred between countries, with a primary focus on corruption in the public sector that results in financial benefits. Public officials have different ways to get financial benefits through corrupt activities, including direct misappropriation and bribery. GFI defines IFF as "funds that are obtained, used, or transferred unlawfully and that cross international borders."[303]

Corruption is linked to illicit financial transactions to the extent that these unlawful transactions serve as a means of separating the earnings from their criminal source, similar to money laundering. Laundering illicit gains often involves cross-border

[300] Tunku Abdul Aziz, "International Case Study: Stamping Out Corruption in Malaysia," *113th International Training Course Visiting Experts' Papers* (2002): 393.
[301] Farhan Gazi, "Malaysia Among Top Countries for Illicit Money Outflows," *IMoney*, last modified 2019, https://www.imoney.my/articles/malaysia-top-countries-illicit-money-outflows.
[302] Ibid.
[303] Global Financial Integrity and (GFI), *Illicit Financial Flows to and from 148 Developing Countries: 2006-2015*, *Global Financial Integrity*, 2019.

financial transactions, which might range from a simple electronic transfer to an account in a secretive jurisdiction, to the establishment of trusts with hidden beneficiaries.[304] According to Chaikin and Sharman, corruption and money laundering are closely connected and have a mutually beneficial relationship. They frequently occur concurrently, and the presence of one tends to promote and enhance the occurrence of the other."[305]

GFI believes that illicit financial transactions are predominantly caused by misrepresentation and leakages in the balance of payments, as stated in their previous publications.[306] The fraudulent manipulation of the price, quantity, or quality of goods or services on an invoice allows criminals, corrupt authorities, and tax evaders in the business world to transfer large amounts of money across borders quickly, easily, and usually without being detected.[307]

Universiti Utara Malaysia

Malaysia ranks among the countries with the biggest flow of illicit funds worldwide, alongside countries like Brazil, Vietnam, and South Africa. According to the International Monetary Fund, they indicate that Malaysia had an outflow of $33.744 million (RM138.65 million), whereas reports from the United Nations imply a possible total of $22.889 million (RM94.05 million) instead. The fluctuations in

[304] Dev Kar and Joseph Spanjers, *Illicit Financial Flows from Developing Countries: 2004-2013*, 2014.
[305] Ibid.
[306] Global Financial Integrity and (GFI), *Illicit Financial Flows to and from 148 Developing Countries: 2006-2015*, *Global Financial Integrity*, 2019.
[307] Ibid.

these figures are mostly attributed to the comtrade data that is available to the United Nations.[308]

The GFI shows that every year, Malaysia loses up to million dollars due to illicit money flow, and corruption is one of the causes of this problem. Another controversial case involving illicit money flow and accumulating excessive wealth is the pandora papers case. The Pandora Papers are leaked documents of data published by the International Consortium of Investigative Journalists in 2021, exposing secret offshore accounts of politicians, celebrities, and business leaders.[309] The Papers involved the disclosure of confidential documents of the world's rich and influential people who hide their wealth by using offshore services. Offshore refers to a company based in a foreign country with a complex network and structure across countries to hide wealth.[310] Transparency International Malaysia (TI-M) urges the government, to take appropriate and immediate action within its jurisdiction on the information revealed in the Pandora Papers.[311]

Universiti Utara Malaysia

[308] Farhan Gazi, "Malaysia Among Top Countries for Illicit Money Outflows," *IMoney*, last modified 2019, https://www.imoney.my/articles/malaysia-top-countries-illicit-money-outflows.
[309] Amar Shah Mohsen, "Where did wealth of those implicated in Pandora Papers come from?" *The Vibes,* March 2023, https://www.thevibes.com/articles/news/86546/where-did-wealth-of-those-implicated-in-pandora-papers-come-from
[310] June Moh, "Pandora Papers: Statement taken from former minister," *The Malaysian Reserve,* February 2023, https://themalaysianreserve.com/2023/02/14/pandora-papers-statement-taken-from-former-minister/
[311] Muhammad Mohan, "TI-Malaysia Urges Government to take Swift Action on Information related to the Pandora Papers," *Transparency International Malaysia,* https://www.transparency.org.my/pages/news-and-events/press-releases/ti-malaysia-urges-government-to-take-swift-action-on-information-related-to-the-pandora-papers

At least 10 wealthy Malaysians, including businessmen and politicians, were named in the Pandora Papers.[312] Among high-profile Malaysians named in the document are former finance ministers Tun Daim Zainuddin and Datuk Seri Tengku Zafrul Tengku Abdul Aziz. Authorities are focusing their probe into the offshore assets of several Malaysians implicated in the Pandora Papers on the source of their wealth and whether they swindled public funds.[313] Law and Institutional Reform Minister Datuk Seri Azalina Othman said the investigations were initiated taking into account the fact that some of the names mentioned previously held government positions. These disclosures show how important it is to explain to the public the suspicious wealth of certain individuals. The rakyat needs to know how those named (in the document) obtained or accumulated their tremendous wealth, which is said to be stowed offshore.[314] An analysis working group comprising the likes of Bank Negara Malaysia, Police, Malaysian Anti-Corruption Commission (MACC), Inland Revenue Board, National Anti-Financial Crime Centre and the Labuan Offshore Financial Services Authority has been set up to probe possible illicit financial flows. [315] These individuals named in the Pandora Papers are being investigated by the MACC for

[312] Hana Naz Harun, Qistina Salehuddin, Nor Ain Mohamed Radhi, "Individuals named in Pandora Papers being investigated by MACC," *The New Straits Times,* February 2023, https://www.nst.com.my/news/nation/2023/02/880118/individuals-named-pandora-papers-being-investigated-macc

[313] Amar Shah Mohsen, "Where did wealth of those implicated in Pandora Papers come from?" *The Vibes,* March 2023, https://www.thevibes.com/articles/news/86546/where-did-wealth-of-those-implicated-in-pandora-papers-come-from

[314] Ibid.

[315] Amar Shah Mohsen, "Where did wealth of those implicated in Pandora Papers come from?" *The Vibes,* March 2023, https://www.thevibes.com/articles/news/86546/where-did-wealth-of-those-implicated-in-pandora-papers-come-from

allegations of corruption, power abuse, and fund misappropriation.[316] As of the end of 2023, the investigation is ongoing, with no recent updates on these individuals being charged in court. Corruption needs to be eradicated to prevent the country from losing more money due to illicit money flow.

## 2.4 Types of Corruption

Corruption is predominant, especially in the public sector.[317] This section will further explain the common types of corruption that constantly happen among public officials in the public sector, and this section will only focus on certain types of corruption in the public sector, which include crimes such as: bribery of public officials, nepotism and favouritism, extortion or giving of protection money; embezzlement, grand and petty corruption, active and passive corruption, improper political contributions, and illicit enrichment.[318]

Universiti Utara Malaysia

The first type of corruption that is going to be discussed is bribery. Bribery is regarded as the act of giving or receiving something, whether it be a physical item or a service, with the intention of corrupting justice or twisting due process, either immediately or in the future. This can occur when both the giver and the receiver

[316] Hana Naz Harun, Qistina Salehuddin, Nor Ain Mohamed Radhi, "Individuals named in Pandora Papers being investigated by MACC," *The New Straits Times,* February 2023, https://www.nst.com.my/news/nation/2023/02/880118/individuals-named-pandora-papers-being-investigated-macc

[317] Abdullahi Y. Shehu, "Key Legal Issues and Challenges in the Recovery of the Proceeds of Crime: Lessons from Nigeria," *International Law Research* 3, no. 1 (2014): 186.

[318] Alharbi Ali Khalaf S., *An Overview of the Saudi Arabian Criminal Justice Procedures against Corruption in the Public Sector*, Resource Material Series No. 77, n.d.

agree or when the receiver forces the giver to comply.[319] The two parties involved are called "dualism"[320] and the concept of dualism is evident in a corrupt transaction. In every case, there is an official and an unofficial procedure, and in almost every official activity, there is dualism.[321]

Besides, other scholars provide the following definition of bribery as the transfer of a fixed monetary sum, a specific percentage of an agreement, or any other payment or in-kind benefit given to the government official who is in charge of making deals on the government's behalf or giving benefits to businesses, people, entrepreneurs, and customers.[322] The act of engaging in or receiving a bribe can be considered corruption per se, including both extractive and redistributive forms of corrupt behaviour. Bribery occurs when a government official accepts or offers something in exchange for something in a corrupt manner. The payments are needed or expected to speed up, ease, or get special treatment in a system, or to avoid specific responsibilities.[323]

Universiti Utara Malaysia

[319] Ettah B. Essien, "Corruption and Economic Development in Nigeria: A Materialistic Observation," *Journal of Economics and Sustainable Development* 3, no. 14 (2012): 38.
[320] The term 'dualism' is called by General Nasution in his written address to the Conference of Muslim Students in North Sumatra on 26 August 1967. Cited by Syed Hussein Alatas, *The Sociology of Corruption: The Nature, Function, Causes and Prevention of Corruption* (Times Books International, 1968).
[321] Syed Hussein Alatas, *The Sociology of Corruption: The Nature, Function, Causes and Prevention of Corruption* (Times Books International, 1968).
[322] Inge Amundsen, *Political Corruption: An Introduction to the Issues*, *Chr. Michelsen Institute : Development Studies and Human Rights*, 1999.
[323] Ibid.

Bribery is probably the most common form of corruption known.[324] The benefits of bribery include a wide range of benefits, such as financial resources, assets, business shares, confidential data, sexual or other favours, entertainment, opportunities for employment, or even the promise of rewards. This benefit may be transferred to the recipient of the bribe, a third party (such as a companion, family member, acquaintance, preferred charity, company, political group, or electoral campaign), or the individual receiving the bribe, either directly or indirectly.[325]

Bribery, however, is also extraction. It acts as an "informal" taxation when government officials demand additional off-the-record payments or "presents" from customers.[326] It is also a method to avoid paying taxes and other financial commitments. Employees of revenue collection agencies, such as tax agencies or customs, are vulnerable to bribery. They could be asked to reduce or waive fees for taxes or other payments that are due, or to hide or overlook proof of misconduct, such as tax infractions or other offences. They might be told to ignore or cover up illegal imports or exports, as well as to hide, ignore, or help with illegal activities like money laundering.[327]

Universiti Utara Malaysia

[324] The United Nations Office on Drugs and Crime (ODC), *The Global Programme Against Corruption: UN Anti-Corruption Tool Kit*, 2004.
[325] Ibid.
[326] Inge Amundsen, *Political Corruption: An Introduction to the Issues*, *Chr. Michelsen Institute : Development Studies and Human Rights*, 1999,11.
[327] The United Nations Office on Drugs and Crime (ODC), *The Global Programme Against Corruption: UN Anti-Corruption Tool Kit*, 2004.

Once bribery has occurred, it can lead to other forms of corruption. Most international and national legal definitions seek to criminalise bribery. Bribes in the public sector can target those who have decision-making or action-taking authority and are willing to employ bribes as a means of influencing the outcome. Public sector bribery might potentially target several individuals, including politicians, regulators, law enforcement officials, court members, prosecutors, and inspectors.[328]

Specific forms of bribery comprise, first, influence-peddling. Influence-peddling is a form of bribery in which people in positions of authority or within the government exchange particular privileges connected to those positions, such as access to or control over how the government makes decisions. The act of influence-peddling should be distinguished from legitimate political advocacy or lobbying activities. In several countries, public sector officials often receive tips or tokens of gratitude in return for their assistance. Difficulties may arise in distinguishing these payments from bribery or extortion, given the tendency to establish relationships between payments and results.[329] Then, the second type of bribery involves the act of offering or accepting improper gifts, signs of gratitude, commissions, or favours.

Universiti Utara Malaysia

[328] The United Nations Office on Drugs and Crime (ODC), *The Global Programme Against Corruption: UN Anti-Corruption Tool Kit*, 2004.
[329] Ibid.

In Malaysia, the example of receiving a commission can be seen in the case of ***Shahril bin Yahya v. Public Prosecutor***.[330] The accused, Shahril, was a contractor and was awarded a project by Jabatan Kerja Raya (JKR) known as 'Projek Rangsangan Baru' to carry out works for certain schools in Perak. He was the main witness in the other criminal case of Pendakwa Raya v. Remely bin Hussin tried at Ipoh Sessions Court. Remely bin Hussin ('Remely') was charged under Section 165 of the Penal Code. Remely was a technician from JKR who supervised the said project. He was alleged to have asked the accused to pay him a commission in relation to this project. The accused gave three statements to "Badan Pencegah Rasuah" officers, which incriminated Remely in relation to his demand for commission. The issue is whether the accused paid the commission of RM10,000 to Remely as a loan for the purpose of doing Remely's wife's business. The court in its judgment defined commission and loan as gratification. The learned counsel for the accused used a rather ingenious approach when he argued that there was no inconsistency as the two words 'commission' and 'loan' are bonded by a common denominator in the definition of 'gratification' in Section 2 of the Anti-Corruption Act. Besides commission, a gratification also means a loan. It was held that he was found guilty of an offence under Section 19(2) of the Anti-Corruption Act 1997, convicted and sentenced to six (6) months' imprisonment and fined RM20,000.

[330] [2011] 8 MLJ 320

Besides, a second type of corruption is called favouritism. Favouritism is defined as an act of unjustly showing preferential treatment to one individual over others in the same category.[331] Favouritism is a form of power abuse that involves the unfair distribution of state resources, regardless of how these resources were obtained. Favouritism, often known as cronyism, refers to the practice of granting positions or advantages to friends and family without considering their qualifications or abilities.[332] Favouritism and corruption are interconnected as they both involve the misuse of power, particularly in the unfair distribution of resources through undemocratic or private ways. Corruption, in its strict sense, pertains specifically to the amassing of resources.

Simply put, favouritism is the natural human tendency to give preference to close associates, relatives, and friends. Favouritism within the context of politics refers to the tendency of state officials and legislators, who possess authority over the allocation of said resources and access to them, to grant preferential treatment to specific individuals during the distribution process.[333] Furthermore, in cases where public positions are closely related to possibilities for corrupt and exploitative

[331] Ettah B. Essien, "Corruption and Economic Development in Nigeria: A Materialistic Observation," *Journal of Economics and Sustainable Development* 3, no. 14 (2012): 37.
[332] Syed Hussein Alatas, *The Sociology of Corruption: The Nature, Function, Causes and Prevention of Corruption* (Times Books International, 1968).
[333] Inge Amundsen, *Political Corruption: An Introduction to the Issues*, *Chr. Michelsen Institute : Development Studies and Human Rights*, 1999,19.

conduct, favouritism can provide significant advantages and benefits for particular families, clans, or specific socioeconomic sub-groups.[334]

Meanwhile, nepotism is an apparent form of favouritism in which an individual in a position of power (leader) possesses the authority to designate people (eg; their own relatives and family members) to prominent positions (spouses, siblings, children, nieces, nephews, cousins, relatives by marriage, etc.).[335] Several unregulated leaders have tried to strengthen their power by designating family members and relatives in key positions across the realms of government, business, and defence or security. Nepotism refers to the act of giving preferential treatment, which is considered unjust, to an individual in a position of authority over relatives and members of their extended family. It can also be viewed as granting immunity to one's clan or family members from legal punishment.[336]

Universiti Utara Malaysia

In addition, extortion is another type of corruption. Extortion refers to the act of obtaining money or other valuable resources from individuals through[337] coercion, violence, or the threat of force.[338] It includes utilising power and position to obtain money and other resources from individuals whom the authority and position are

[334] Inge Amundsen, *Political Corruption: An Introduction to the Issues*, *Chr. Michelsen Institute : Development Studies and Human Rights*, 1999, 20.
[335] Ray Fisman and Miriam A. Golden, *Corruption: What Everyone Needs to Know* (Oxford University Press, 2017).
[336] Ettah B. Essien, "Corruption and Economic Development in Nigeria: A Materialistic Observation," *Journal of Economics and Sustainable Development* 3, no. 14 (2012): 37.
[337] Stephen D. Morris, "Forms of Corruption," *CESifo DICE Report* 9, no. 2 (2011).
[338] Inge Amundsen, *Political Corruption: An Introduction to the Issues*, *Chr. Michelsen Institute: Development Studies and Human Rights*, 1999, 18.

meant to safeguard.[339] Extortion, in contrast to bribery which involves offering bribes, obtains cooperation through coercion, such as the threat or use of physical harm, threats of physical harm, or the disclosure of damaging information. Similar to other forms of corruption, the term "victim" includes both the public interest and people who experience adverse consequences as a result of a corrupt act or decision.

In cases involving coercion, a further victim experiences harm, specifically the one who is coerced to engage in cooperation. Although government officials and insiders are capable of committing coercion, these individuals are also liable to be victims. For instance, a government official may manipulate corrupt payments[340] for a service, or an individual seeking a favour may manipulate the government official through the use of coercion. At times, coercion can differ from bribery only in the degree of coercion applied.[341] Similar to bribery, coercion and blackmail represent fundamentally corrupt transactions, when the monies are forcibly extracted, and the resulting profits are low. The exchange of benefits is significantly imbalanced because the person being blackmailed might only get some protection from negative events happening in return for millions of dollars in protection money.[342]

Universiti Utara Malaysia

[339] Ettah B. Essien, "Corruption and Economic Development in Nigeria: A Materialistic Observation," *Journal of Economics and Sustainable Development* 3, no. 14 (2012): 37.
[340] The United Nations Office on Drugs and Crime (ODC), *The Global Programme Against Corruption: UN Anti-Corruption Tool Kit*, 2004.
[341] Ibid.
[342] Inge Amundsen, *Political Corruption: An Introduction to the Issues*, *Chr. Michelsen Institute : Development Studies and Human Rights*, 1999, 18.

Officials who possess the authority to initiate or carry out criminal prosecutions often employ the threat of legal penalties or punishments as a basis for coercion. In many countries, those who are involved in minor offences, such as traffic accidents, might face threats of more serious charges unless they 'pay up.' On the contrary, officials engaged in corrupt practices or misconduct may be subject to exposure threats unless they 'pay up.'[343]

Another case of public servants abusing their power by extracting money using extortion or enforcement can be seen in ***Public Prosecutor v. Ismail bin Mohd Azmi & another appeal.***[344] The court said that the accused had committed a most despicable crime. He abused his position as a police officer by victimising and putting fear in a disabled shopkeeper in an attempt to commit the act of bribery. According to Judge Yeoh Wee Siam, the defendant should not arrogantly exercise authority and demand bribes from their victims in the name of law enforcement. Corruption is a severe offence that should be eliminated to ensure businesses and commerce in the country thrive and enable the community to continue its operations without interference from law enforcement officers like the defendant. Undoubtedly, eradicating such illicit behaviour would improve Malaysia's ranking on the global corruption index.[345]

Universiti Utara Malaysia

[343] The United Nations Office on Drugs and Crime (ODC), *The Global Programme Against Corruption : UN Anti-Corruption Tool Kit*, 2004.
[344] [2010] 1 MLJ 108
[345] [2010] 1 MLJ 108

In addition, embezzlement is another type of corruption crime. Embezzlement refers to the act of stealing money that is within one's control but not rightfully theirs.[346] The act involves the misappropriation of public funds for personal or private purposes and the subsequent neglect or inability to uphold the responsibilities for which the funds were allocated.[347] In other terms, embezzlement refers to the illicit misappropriation of public resources by officials employed by the government, hence being regarded as an alternative type of diverting public funds. Government officials engage in the illicit acquisition of assets from the public organisation where they work, and from assets, they are tasked with managing them on behalf of the government and the public. Nonetheless, disloyal employees in private organisations can also embezzle their employers and companies, and various resources might be embezzled.[348]

Universiti Utara Malaysia

From a strictly legal point of view, embezzlement is not classified as corruption. From a legal perspective, corruption refers to a transaction between two parties, namely a government employee and a civilian, in which the government official exceeds legal limits and restrictions to obtain personal benefits using a bribe.[349] Embezzlement is, therefore, seen as a form of theft due to the lack of direct involvement of the civilian party. The general public experiences only indirect

[346] Stephen D. Morris, "Forms of Corruption," *CESifo DICE Report* 9, no. 2 (2011).
[347] Ettah B. Essien, "Corruption and Economic Development in Nigeria: A Materialistic Observation," *Journal of Economics and Sustainable Development* 3, no. 14 (2012): 38.
[348] Inge Amundsen, *Political Corruption: An Introduction to the Issues*, *Chr. Michelsen Institute : Development Studies and Human Rights*, 1999, 11.
[349] Ibid.

consequences when public money is misappropriated, and individual citizens lack legal entitlement to seek compensation for any losses.[350]

Furthermore, grand corruption is another type of corruption that pervades the highest levels of a national government, leading to a broad erosion of confidence in good governance, the rule of law, and economic stability.[351] Grand corruption happens when a high-ranking individual who influences government strategies or has the power to influence government decisions demands payment in exchange for using the extensive discretionary powers entrusted to them, often in foreign countries and currencies. Grand corruption plays a vital role in privatisation processes and public procurement[352] such as the acquisition of aeroplanes, vessels, and military equipment, including telecommunications; the acquisition of essential equipment for major industrial and agricultural projects; significant civil engineering agreements, such as those concerning dams, bridges, roads, airports, and medical facilities; and the ongoing acquisition of bulk commodities like oil, fertilisers, and cement. In cases where standardisation is required, a parastatal company handles distribution or repeat orders for pharmaceuticals and school textbooks are common.[353]

Universiti Utara Malaysia

[350] Inge Amundsen, *Political Corruption: An Introduction to the Issues*, *Chr. Michelsen Institute : Development Studies and Human Rights*, 1999, 11.
[351] Ibid.
[352] Nihal Jayawickrama, "A Holistic Approach to Combating Corruption," *Commonwealth Law Bulletin* 25, no. 2 (1999): 658.
[353] Ibid., 659.

Meanwhile, petty corruption may involve cases where individuals engage in transactions involving small amounts of money, provide small rewards in exchange for special treatment, or hire acquaintances and family members for minor positions. The primary distinction between grand and petty corruption is that grand corruption changes or undermines the essential functions of government. In contrast, minor corruption remains within the rules set by society and the government.[354]

Moreover, bribery and other transactional offences often involve both active and passive corruption.[355] Active bribery refers to the act of corruptly providing, offering, or promising any form of gratification to a government official. The act of promising, giving, or offering to the official can be carried out by the individual alone or in collaboration with another party.[356] Meanwhile, passive bribery involves receiving a bribe. This represents the most common form of bribery.[357]

Universiti Utara Malaysia

Besides, improper political contributions are also one type of corruption. One of the most significant challenges in developing measures to combat corruption is distinguishing between legitimate contributions to political organisations and

[354] The United Nations Office on Drugs and Crime (ODC), *The Global Programme Against Corruption : UN Anti-Corruption Tool Kit*, 2004.
[355] Ibid.
[356] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[357] The United Nations Office on Drugs and Crime (ODC), *The Global Programme Against Corruption : UN Anti-Corruption Tool Kit*, 2004.

payments made with the intention to exert undue influence over the present or future activities of a party or its members once they are in power.[358]

A donation made by individuals who support a political party and aim to improve its chances of winning elections is not considered corrupt. In fact, they can play a vital role in the political system and, in some countries, are considered a basic feature of freedom of expression and political participation protected by the constitution. A donation made with the expectation or intent that the political party, upon assuming office, will prioritise the donor's interests over those of the general public might be equivalent to offering a bribe. The implementation of legislation regarding political contributions has presented significant difficulties in practice. Donations might come in various ways, including direct cash transfers, loans with minimal interest, the provision of goods or services, or intangible favours that benefit the political party involved.[359]

A commonly employed approach to tackling this issue includes implementing strategies that seek to provide transparency by requiring the transparency of donations and ensuring political accountability for both the donor and recipient.

[358] The United Nations Office on Drugs and Crime (ODC), *The Global Programme Against Corruption: UN Anti-Corruption Tool Kit*, 2004.
[359] Ibid.

Another approach is implementing a contribution limit as a means to prevent any individual donor from having an excessive influence.[360]

Improper political contributions can be seen in the case of ***Public Prosecutor v. Dato' Sri Mohd Najib bin Hj Abd Razak***.[361] The former Malaysian Prime Minister Najib Razak has been found guilty of corruption in the first of several cases linked to the alleged theft of billions of dollars from state fund 1 Malaysia Development Berhad (1MDB).[362] The thesis has made multiple references[363] to this case because he is the first prime minister of Malaysia to be found guilty of graft.

Najib was confronted with seven allegations associated with SRC International, a subsidiary of 1MDB, which claimed that considerable amounts of money entered his personal bank accounts.[364] Najib's defence team argued and insisted that he was not aware of the SRC funds being deposited into his bank accounts, instead claiming that the money had been contributed by a Saudi Arabian prince and not embezzled from the state fund.[365] However, despite this, prosecutors claimed that Najib knowingly directed and provided instructions for the transfer of funds into his personal accounts,

[360] The United Nations Office on Drugs and Crime (ODC), *The Global Programme Against Corruption : UN Anti-Corruption Tool Kit*, 2004.
[361] [2020] MLJU 1254
[362] Ted Regencia, "Malaysia's Najib Guilty of All Charges in 1MDB-Linked Graft Case," *Al Jazeera*, July 28, 2020, https://www.aljazeera.com/news/2020/7/28/malaysias-najib-guilty-of-all-charges-in-1mdb-linked-graft-case.
[363] For comprehensive and further discussion about this case, please refer to Chapter 1 page 22, and Chapter 6 under subtopic 6.3.1.2.
[364] Kate Mayberry, "Najib Faces 1MDB Verdict as Malaysian Political Ground Shifts," *Al Jazeera*, July 28, 2020, https://www.aljazeera.com/news/2020/7/28/najib-faces-1mdb-verdict-as-malaysian-political-ground-shifts.
[365] Jonathan Head, "Najib Razak: Malaysian Ex-PM Gets 12-Year Jail Term in 1MDB Corruption Trial," *BBC News*, 2020, https://www.bbc.com/news/world-asia-53563065.

which were used to fund extravagant purchases, home renovations and provide funding for parties of his previous governing coalition. [366]

In response to the allegations of power abuse, several occurrences of money laundering,[367] and breach of trust[368] brought against Najib, Judge Mohamad Nazlan Ghazali said that the prosecution has effectively and convincingly presented its case. Consequently, he finds the defendant accountable and guilty of all seven accusations. Additionally, he said that Najib, who also held the position of finance minister, exceeded acceptable limits in his loan endorsements, resulting in the transfer of funds into his personal account. Najib gained benefits from the loan approvals, and the defence failed to raise reasonable doubt over the offence of abuse of power.[369]

Last but not least, illicit enrichment or living beyond means, is also being considered a corruption crime. Illicit enrichment or a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income. Illicit enrichment crime is the result of corruption, where the abnormal growth of wealth indicates corruption.[370] The act of corruption inherently takes place

[366] Ted Regencia, "Malaysia's Najib Guilty of All Charges in 1MDB-Linked Graft Case," *Al Jazeera*, July 28, 2020, https://www.aljazeera.com/news/2020/7/28/malaysias-najib-guilty-of-all-charges-in-1mdb-linked-graft-case.

[367] Money laundering under Section 4 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001

[368] Criminal breach of trust under Section 409 of the Penal Code.

[369] Abuse of power under Section 23 of the Malaysian Anti-Corruption Act 2009.

[370] Nabil Mahmoud, Hasan Al-Sayed, *The Crime of Illicit Enrichment*, 1st ed. (Cairo-Egypt: Etrac for publishing, 2005). & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020. & Interview with Respondent 5, Senior

in a secret manner, creating difficulties in terms of identification and investigation. However, it is worth noting that government officials and their family members possess assets exceeding their legal income and would be relatively easy to identify, investigate, and prosecute.[371] The extreme challenges associated with gathering evidence to prove bribery and other forms of corruption require consideration of criminalising a significant increase in public officials' property. Corruption can be effectively combated by including illicit enrichment on the list of offences involving corruption.[372]

Various international and regional anti-corruption instruments have criminalised the illicit enrichment offence,[373] and these instruments define illicit enrichment. According to UNCAC, illicit enrichment is defined as a substantial increase in the wealth of a public officer that their legal income cannot reasonably explain. Although the focus of UNCAC appears to be limited to the wealth of public officials, the AU Convention overcomes this restriction by including the term 'any other

Universiti Utara Malaysia

Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.

[371] ADB-OECD Anti-Corruption Initiative for Asia-Pacific Combating Corruption in the New Millennium, "Effective Prosecution of Corruption," 2003. https://read.oecdilibrary.org/governance/effective-prosecution-of corruption_9789264041394-en#page1.

[372] Mesay Tsegaye Meskele, "The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law," (master's thesis, Faculty of Law, University of the Western Cape, South Africa, 2012), 30.

[373] See, for example, Article 20 of UNCAC, Article IX(1) of the OAS Convention and Article 8(1) of the AU Convention.

person.'[374] The term was introduced because assets are easily transferred to third parties, who are in some way associated with public officers.[375]

## 2.5 Concept of Wilful Blindness

The concept of wilful blindness is a judicially developed addition to the statutory provisions on *mens rea*. Therefore, this thesis aims to study this concept and establish standards for its application, as it could be highly useful in proving *mens rea* in cases related to illicit enrichment.

Traditionally, the element of *mens rea* stems from the conviction that "actus reus non facit reum nisi mens sit reas," that is, "the act is not guilty unless the mind is guilty." This idea relies heavily on the idea that a person is only liable for actions he deliberately carried out.[376]

Universiti Utara Malaysia

Therefore, the *mens rea* of offences are knowledge, recklessness, negligence, intent, malice, purposefulness, etc. In order to cover situations where the traditional mental elements are inadequate, the concept of wilful blindness was judicially developed. Essentially, wilful blindness refers to ignorance that was deliberately contrived.[377] It is also known as conscious avoidance, contrived ignorance, or wilful ignorance.[378] In

[374] See Article 1(1) of the AU Convention.
[375] Mesay Tsegaye Meskele, "The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law," (master's thesis, Faculty of Law, University of the Western Cape, South Africa, 2012), 30.
[376] Mohammed Suleh-yusuf, 'Corporate Criminal Liability: Reviewing the Adequacy of Willful Blindness as Mens Rea,' *International Journal of Law* 3, no. 2 (2017): 24–32, www.lawjournals.org.
[377] Frans Van Kaenel, 'Willful Blindness: A Permissible Substitute for Actual Knowledge Under the Money Laundering Control Act?', *Washington University Law Review* 71, no. 4 (1993).
[378] Mohammed Suleh-yusuf, 'Corporate Criminal Liability: Reviewing the Adequacy of Willful Blindness as Mens Rea,' *International Journal of Law* 3, no. 2 (2017): 24–32, www.lawjournals.org.

criminal cases, a distinguishing feature of criminal law is that criminal liability requires proof of "an evil-meaning mind with an evil-doing hand." It is not enough that the defendant performed the 'guilty act' (*actus reus*), she must have done so with a 'guilty mind' (*mens rea*).[379] The Supreme Court in the case of ***Spurr v. U.S*** [380] concluded by saying that it was only in the 1970s that the concept of wilful blindness became an integral part of narcotics related prosecutions.

In the case of ***Public Prosecutor v. Hla Win,***[381] his Lordship said as follows: As Professor Glanville Williams aptly remarked in his Textbook on Criminal Law, at p. 125: the strict requirement of knowledge is qualified by the doctrine of wilful blindness. This is meant to deal with those whose philosophy is: Where ignorance is bliss, it is folly to be wise. To argue away inconvenient truths is a human failing. If a person deliberately 'shuts his eyes' to the obvious because he 'does not want to know,' "he is taken to know".[382]

Taking everything into account, the wilful blindness doctrine can be summed up as being used when there are enough red flags for a reasonable person to question whether or not a certain transaction is official. To put it another way, if the circumstances are such as to arouse suspicion, then it is incumbent for a person to make the necessary enquiries in order to satisfy himself as to the genuineness of what was informed to him.[383] Should he fail to embark upon this course of action, then he

[379] Giri Parameswaran, 'An Economic Analysis of Criminal Intent and Willful Blindness' (2021).
[380] Spurr v United States, 174 U.S. 728, 19 S. Ct. 812, 43 L. Ed. 1150 (1899)
[381] [1995] 2 SLR 424
[382] Pendakwa Raya v Tengku Faris bin Engku Bongsu [2018] MLJU 609
[383] Pendakwa Raya v Tengku Faris bin Engku Bongsu [2018] MLJU 609

will be guilty of 'wilful blindness.' In other words, he is then taken to know the true situation. He then cannot be said to have either rebutted the presumption of knowledge or have raised a reasonable doubt as to his knowledge of the situation.[384]

One of the cases in Malaysia that applied this concept is the case of ***PP v. Dato' Sri Mohd Najib Bin Abdul Razak***.[385] Before sentencing, Judge Mohd Nazlan Mohd Ghazali stated that he had considered several factors, such as the public interest and the main objectives of law enforcement. The judge emphasised that the penalty serves not only to punish offenders but also to prevent others from committing the same act and the judge said "I have also considered his contribution to the country's economic growth.[386] After considering all the evidence in this trial, I find the prosecution has successfully proven the case," the judge told the Kuala Lumpur High Court.[387] Besides, Najib failed to take measures to verify the legality of the RM42m deposited into his personal accounts and did not ensure that the monies were not derived from any illegal activities. Despite there being reasonable cause to suspect the source of such huge funds in his accounts, Najib intentionally avoided questioning or verifying the source or authenticity of the information in order to deny knowledge. This was wilful blindness, which the law treated as knowledge. The *mens rea* element of the offence under Section 4(1), as specified in Section 4(2) of the AMLATFPUAA, had been proven by the prosecution beyond reasonable doubt

[384] Pendakwa Raya v Tengku Faris bin Engku Bongsu [2018] MLJU 609
[385] Public Prosecutor v Dato' Sri Mohd Najib Bin Abdul Razak [2020] MLJU 1254; [2020] 11 MLJ 808 & please refer to the problem statement in chapter one for further details on this case.
[386] Ibid.
[387] Jonathan Head, "Najib Razak: Malaysian Ex-PM Gets 12-Year Jail Term in 1MDB Corruption Trial," *BBC News*, 2020, https://www.bbc.com/news/world-asia-53563065.

warranting the application of the doctrine of 'wilful blindness' against Najib. Notwithstanding the finding of wilful blindness, the defence failed to cast any reasonable doubt on the prosecution's case that Najib knew that the RM42m originated from SRC.[388]

Thus, the concept of wilful blindness can act as a substitute to *mens rea*,[389] because it is a form of *mens rea* and can actually substitute the traditional types of intent in determining criminal liability.[390] Despite some ambiguities, it is clear that 'conscious avoidance' equates to the intention to commit a crime. The courts have concluded that wilful blindness is equivalent to actual knowledge.[391]

Wilful blindness addresses situations where individuals deliberately avoid knowledge of facts that would indicate illegal gains. In connecting this concept with the *mens rea* element in illicit enrichment cases, this concept can help courts prove *mens rea* by showing that a defendant purposely ignored red flags that pointed to illicit enrichment, thereby demonstrating an intentional disregard for the law rather than mere negligence. In Malaysia, the concept could assist prosecutors by providing a possibility to argue that the accused had constructive knowledge of the unlawfulness of their assets. For instance, if a defendant possesses wealth significantly beyond their lawful income but refrains from asking questions about its legality, their wilful

[388] Public Prosecutor v Dato' Sri Mohd Najib Bin Abdul Razak [2020] MLJU 1254; [2020] 11 MLJ 808
[389] Mohammed Suleh-yusuf, 'Corporate Criminal Liability: Reviewing the Adequacy of Willful Blindness as Mens Rea,' *International Journal of Law* 3, no. 2 (2017): 24–32, www.lawjournals.org.
[390] Ibid.
[391] Ibid.

blindness could suggest they deliberately avoided knowing the truth, thus establishing the *mens rea* necessary for prosecution.

2.6 Broken Window Theory

Another concept or theory that should be considered in this thesis is the broken windows theory. This theory originates from a social experiment conducted by Phillip Zimbardo, an American psychologist, in 1969. The theory posits that one abandoned building with outgrown weeds and broken windows can ultimately lead to the degeneration of a beautiful, stable neighbourhood into an unstable community. [392]

The logic behind this theory is not complicated. The theory states that if visible signs of disorder and misbehaviour are left untreated within a community, it will soon lead to more disorder and misbehaviour. Essentially, the theory holds that signs of disorder and crime can change a whole community if left untreated. A building with a broken window that is left unrepaired gives the impression that no one cares and there is no authority. If the abandoned building is left untreated, people with more sinister intentions are inclined to put it in worse conditions. If the building's condition gets worse, drug addicts, homeless people, and teens will begin to gather to commit crimes.[393]

As a result of the increased rate of crime, citizens may grow fearful of becoming victims. When a neighbourhood becomes disordered in this way, it demonstrates to

[392] Macayla Banks, 'Analysis of a Neighborhood-Based Criminological Theory: Broken Windows Theory,' *ASU Criminal Justice Journal* 3 (2022): 10–16.
[393] Ibid.



Universiti Utara Malaysia

citizens that the police are not monitoring as they should. This outcome also fosters mistrust in the criminal justice system. When city leaders and police ignore disorder, it provides an opportunity for criminals to become comfortable and settle. Once addicts and criminals are settled, the rate of crime inevitably increases. Citizens continue to feel unprotected in an environment where there should be a sense of security.[394]

In a nutshell, the broken windows theory has been effective in identifying crime-causing disorders and creating a sense of security by reducing visible signs of disorder, which can prevent more serious crimes. This theory, which promotes the idea that maintaining order deters crime, could be applied to cases of illicit enrichment in Malaysia. Implementing specific laws on illicit enrichment and asset declarations would act as a deterrent, indicating to public servants that they are being observed. When they possess excessive wealth, they should recognize that legislation prohibits holding unexplained excessive wealth, as it constitutes a crime in Malaysia.

Malaysia must enact laws on illicit enrichment and asset declarations to address existing loopholes, as the absence of such laws can provide public servants with opportunities to illegally accumulate wealth. The accumulation of excessive, unexplained wealth could result in a rise in corruption among public servants, as it reduces accountability and encourages the abuse of power. Corruption, if left untreated, can negatively transform an entire community. The implementation and

[394] Macayla Banks, 'Analysis of a Neighborhood-Based Criminological Theory: Broken Windows Theory,' *ASU Criminal Justice Journal* 3 (2022): 10–16.

enforcement of these laws would, therefore, foster transparency and strengthen integrity within the public service, in accordance with the principles of the broken windows theory by preventing greater harm through proactive governance.

## 2.7 Malaysian Initiatives to fight Corruption & Illicit Enrichment

The illicit money flows had caused Malaysia to lose millions of dollars, according to the GFI reports. This is because corruption is a widespread issue that affects all countries to varying degrees. It is a disease, which due to its corrosive social, economic, and political effects must be actively fought and eliminated by governments. Since every country are different in terms of social, economy, and political, there is no widely accepted remedy in their struggle against corruption. So, every country needs to adopt different kind of anti-corruption strategies and comprehensive approach in a way to fight corruption,[395] because every country seeks to build a society that is harmonious, united, continually developing, successful, and maintains integrity. Malaysia is likewise not an exception when it comes to fighting corruption in both the public and private sectors. The fight and initiatives against corruption are discussed in more detail below.

Universiti Utara Malaysia

[395] Felipe Garcia Andrade, "Singapore and Finland: Why So Clean?" *Graphite Publications* (2012).

2.7.1 Initiative by the Rule of law

Legislation is one weapon in the fight against corruption. The Malaysian anti-corruption laws have undergone several stages and revisions.[396] Malaysia enacted its very first anti-corruption law in 1961,[397] followed by another in 1997.[398] Malaysia enacted its most recent anti-corruption legislation in 2009,[399] which became effective on January 1, 2009. The evolution of anti-graft law is shown as follows:

Table 2.7.1 Trajectory of Anti-Corruption Laws and Agency Evolution in Malaysia.[400]

| Year | |
|---|---|
| 1950 | The Prevention of Corruption Ordinance replaced previous laws introduced in the Federated Malay State, State of Johor and that Straits Settlement. |
| 1959 | Corruption Prevention Unit formed |
| 1961 | Prevention of Corruption Act (PCA 1961) |
| 1967 | Formation of Anti-Corruption Agency (ACA) |
| 1970 | The Emergency (Essential Powers) Ordinance |
| 1973 | Introduction of National Bureau of Investigation |
| 1982 | Anti-Corruption Agency (established by PCA 1961) |

[396] Amir Nasruddin, "Best Practices in Anti-Corruption: A Decade of Institutional and Practical Development in Southeast Asia" (n.d.).
[397] Prevention of Corruption Act, 1961 [Act 57]
[398] Anti-Corruption Act 1997 [Act 575].
[399] Malaysian Anti-Corruption Commission Act 2009 [Act 694].
[400] World Bank Group, *Enhancing Government Effectiveness and Transparency. The Fight Against Corruption* (Kuala Lumpur, Malaysia, 2020).



Universiti Utara Malaysia

| | |
|---|---|
| 1997 | Anti-Corruption Act |
| 1997 | Anti-Corruption Agency (established by PCA 1961) |
| 2009 | Malaysian Anti-Corruption Commission Act |
| 2009 | Malaysian Anti-Corruption Commission reports to Prime Minister |
| 2019 | Malaysian Anti-Corruption Commission reports to Parliament |

Established in the 1950s, Malaysia's anti-corruption system has evolved over time, driven by the country's political and economic changes.[401] In the early years of Malaysian government anti-corruption measures, as shown in the aforesaid table, graft prevention initiatives began in the 1950s with the implementation of the Prevention of Corruption Ordinance, which eventually resulted in the formation of the Anti-Corruption Agency (ACA) in 1967.[402] Its primary purpose was to fight corruption, which the police had previously addressed. It was believed that as the economy became more complex, the need for experts to address white-collar offences, such as corruption, increased.[403]

During the early[404] years, the ACA, fully supported by the government, achieved several remarkable accomplishments, including the successful prosecution and

[401] World Bank Group, *Enhancing Government Effectiveness and Transparency. The Fight Against Corruption* (Kuala Lumpur, Malaysia, 2020).
[402] Ibid.
[403] Tunku Abdul Aziz, "International Case Study : Stamping Out Corruption in Malaysia," *113th International Training Course Visiting Experts' Papers* (2002), 394. & Interview with Respondent 7, Legal Officer. Revision Unit. State Legal Advisor Offices. (February 26, 2020)
[404] Tunku Abdul Aziz, "International Case Study: Stamping Out Corruption in Malaysia," *113th International Training Course Visiting Experts' Papers* (2002), 394.

conviction of several political figures and high-ranking public officers.[405] Corruption may occur when those who have the power to allocate public resources on behalf of the state or government, such as public employees, officials, administrators, and policymakers, abuse their position of power for personal benefit.[406]

In 1997, the Government passed the Anti-Corruption Agency to address public concerns about the negative impact of corruption on the country's reputation. This agency was established under the Prevention of Corruption Act 1961 to combat growing and complex forms of corruption.

At this point, significant efforts have been made to raise awareness about corruption,[407] aiming to decrease the number of corrupt activities in the public sector. As a result, the ACA transformed from a governmental organisation into a commission called the Malaysian Anti-Corruption Commission (MACC) in 2009.[408] MACC is the main governing body responsible for combating corruption in Malaysia.

Universiti Utara Malaysia

[405] Tunku Abdul Aziz, "International Case Study: Stamping Out Corruption in Malaysia," *113th International Training Course Visiting Experts' Papers* (2002), 394.
[406] Inge Amundsen, *Political Corruption: An Introduction to the Issues*, *Chr. Michelsen Institute : Development Studies and Human Rights*, 1999, 2.
[407] The United Nations Office on Drugs and Crime (ODC), *The Global Programme Against Corruption: UN Anti-Corruption Tool Kit*, 2004.
[408] World Bank Group, *Enhancing Government Effectiveness and Transparency. The Fight Against Corruption* (Kuala Lumpur, Malaysia, 2020).

The establishment of MACC was authorised by the Malaysian Anti-Corruption Commission Act 2009 (Act 694) (hence referred to as MACCA), and it officially began its operations on 1 January 2009, taking the functions previously held by the Anti-Corruption Agency (ACA) of Malaysia.[409] The Malaysian Anti-Corruption Commission (MACC) is governed by the MACC Act 2009,[410] and functions as the primary body responsible for detecting, preventing, and investigating acts of corruption in accordance with the MACCA. Cases of corruption can be reported to the Malaysian Anti-Corruption Commission (MACC) through various channels, including a toll-free hotline.[411]

The hierarchy of anti-corruption laws in Malaysia is shown in Figure 2.7.1 as follows:

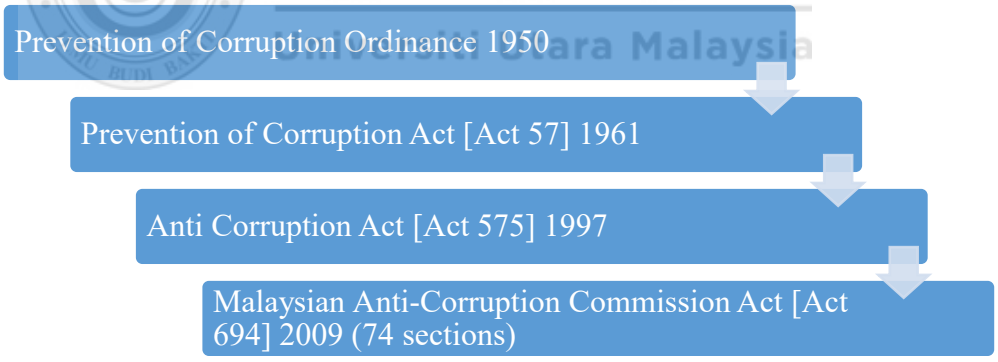



Figure 2.7.1 The Hierarchy of Anti-Corruption Law.[412]

[409] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[410] Malaysian Anti-Corruption Commission Act 2009 [Act 694] & Interview with Respondent 5, Senior Assistant Commissioner. Operation Target Branch. Anti-Money Laundering (AML) Division. Malaysian Anti-Corruption Commission. (January 24, 2020)
[411] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[412] Amir Nasruddin, "Best Practices in Anti-Corruption: A Decade of Institutional and Practical Development in Southeast Asia" (n.d.). & Interview with Respondent 5, Senior Assistant Commissioner. Operation Target Branch. Anti-Money Laundering (AML) Division. Malaysian Anti-Corruption Commission. (January 24, 2020).

The Commission is primarily responsible, as authorised by Section 11 (1) of the MACCA, for carrying out the responsibilities specified in Section 7.[413] These tasks involve identifying, preventing, and investigating cases of corruption that violate the MACCA. It also evaluates the methodologies, systems, and protocols of both public and private entities in order to identify ways to eliminate corruption. It provides guidance to leaders of public entities on necessary adjustments to their practices, systems, or protocols to reduce corruption risks, as determined by the Chief Commissioner. Additionally, it carries out public anti-corruption education and mobilises public support against corruption. The Chief Commissioner provides updates to the (Parliamentary) Special Committee on Corruption as mandated by Section 11(2) of the MACC Act 694.[414] Basically, the main duties of MACC officers have been clarified under Section 7 of the MACCA above.[415]

Universiti Utara Malaysia

Along with the MACC, the Royal Malaysia Police and the Royal Customs and Excise Department also have the power to investigate offences related to corruption, as stated in Sections 67[416] and 70[417] of the MACCA. The cooperation between

[413] Malaysian Anti -Corruption Commission (MACC), *Malaysian Anti-Corruption Commission Annual Report 2020*, 2020. & Interview with Respondent 7, Legal Officer. Revision Unit. State Legal Advisor Offices. (February 26, 2020).
[414] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[415] Interview with Respondent 5, Senior Assistant Commissioner. Operation Target Branch. Anti-Money Laundering (AML) Division. Malaysian Anti-Corruption Commission. (January 24, 2020) & Interview with Respondent 7, Legal Officer. Revision Unit. State Legal Advisor Offices. (February 26, 2020)
[416] Section 67: Application of provisions of this Act to a prescribed offence – Notwithstanding any other written law to the contrary, the provisions of this Act shall apply to a prescribed offence regardless of whether the prosecution or any other proceedings in respect of such offence are instituted or taken by an officer of the Commission, or a police officer or customs officer, or any other officer having powers to investigate, prosecute or take any proceedings in respect of such offence.

agencies is strong, characterised by regular coordination and the exchange of reports. The Malaysian Anti-Corruption Commission (MACC) has formed several memorandum of understanding (MoUs) with other government agencies, including the Royal Customs and Excise Department, Royal Malaysia Police, and Road Transport Department. [418]

The latest MACC Act also contains provisions from the previous anti-corruption act, and it can be used if the relevant offences occurred in the year before the act was enacted. This is because, the act does not only cover the offences stated in the act, but also covers other offences that can be considered as "prescribed offences." Prescribed offences mean any offences as provided under Section 3 of the MACCA including any offence as under any written law as specified in the Schedule and any offences under the penal code such as commercial crimes or white-collar crimes.[419]

Universiti Utara Malaysia

For the purpose of operational and investigation, MACC use 4 main offences which is Section 16,[420] 17,[421] 18 [422] and 23.[423] These are the four sections that are the pillars

[417] Section 70: Powers of police officers under this Act – Nothing contained in this Act shall derogate from the powers of a police officer to investigate into any offence under this Act and to prosecute any person in respect of any such offence, so long as the provisions of this Act are complied with.
[418] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[419] "Prescribed offence" means any offence under any written law as specified in the Schedule, an offence punishable under section 137 of the Customs Act 1967 [Act 235], an offence under Part III of the Election Offences Act 1954 [Act 5], an attempt to commit any of the offences referred to in paragraphs (a) to (c) or; an abetment of or a criminal conspiracy to commit (as those terms are defined in the Penal Code) any of the offences referred to in paragraphs (a) to (c), whether or not the offence is committed in consequence thereof. & Interview with Respondent 7, Legal Officer. Revision Unit. State Legal Advisor Offices. (February 26, 2020)
[420] Section 16: Offence of accepting gratification of the MACCA 2009
[421] Section 17: Offence of giving or accepting gratification by agent of the MACCA 2009
[422] Section 18: Offence of intending to deceive principal by agent of the MACCA 2009

of MACC Act 2009,[424] and the main predicate offences of bribery under MACCA.[425] Basically the most popular offences in MACC would be Section 16 and 17 which is giving and taking gratification. MACC is also pursuing Sections 23 and 18, which deal with abuse of power and false claims, respectively.[426] Sections 16, 17 and 21[427] of the MACCA criminalise the act of both giving and receiving bribes. According to Section 24[428] of the MACCA, the punishment for every case might involve a maximum of twenty years of imprisonment, as well as a monetary penalty.[429]

Based on the provisions provided by the MACC Act 2009, a variety of initiatives and strategies have been executed by the MACC in an effort to educate the public about corruption, rally public opinion against corruption, and motivate individuals to take proactive measures in the fight against it.[430] The prevention sector by the MACC consists of two primary divisions, namely the Inspection and Consultancy Division and the Agency Integrity Management Division.[431] The prevention division's primary purpose is to foster and promote integrity in both the public and private

[423] Section 23: Offence of using office or position for gratification of the MACCA 2009, Malaysian Anti - Corruption Commission (MACC), *Malaysian Anti-Corruption Commission Annual Report 2020*, 2020. & Interview with Respondent 5, Senior Assistant Commissioner. Operation Target Branch. Anti-Money Laundering (AML) Division. Malaysian Anti-Corruption Commission. (January 24, 2020)
[424] Interview with Respondent 8, Deputy Public Prosecutor. Malaysian Anti-Corruption Commission. (May 6, 2020)
[425] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[426] Interview with Respondent 8, Deputy Public Prosecutor. Malaysian Anti-Corruption Commission. (May 6, 2020)
[427] Section 21: Bribery of officer of public body of the MACCA 2009
[428] Section 24: Penalty for offences under Sections 16, 17, 18, 20, 21, 22, 23 of the MACCA 2009
[429] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[430] Philip M. Nichols, "The Psychic Costs of Violating Corruption Laws," *Vanderbilt Journal of Transnational Law 45* (2012): 145–210.
[431] "Prevention Sector," *Malaysian Anti-Corruption Commission*, https://www.sprm.gov.my/index.php?id=21&page_id=91 (accessed June 18, 2019).

sectors, eliminate any potential for corruption and ethical violations, and enhance effective governance. The two divisions are discussed below.

### 2.7.2 Initiative by Inspection and Consultancy Division

The Inspection and Consultation Division of the MACC is authorised under sections 7 (c), (d), and (e) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694). This unit guides the Head of public bodies in identifying the main factors contributing to corruption, abuse of power, and embezzlement within their practices, systems, and work procedures. Subsequent to this, consultations are conducted with the organisation to propose enhancements that can be implemented to fix any incidents of corrupt behaviour or misconduct. These improvements aim to address and prevent any other acts of corruption.[432]

This division is responsible for implementing various anti-corruption initiatives, including Corruption Risk Management, Corporate Integrity Pledge, Anti-Bribery Management System (ABMS) MS ISO 370001:2016, National Anti-Corruption Plan (NACP), Organisational Anti-Corruption Plan (OACP), Corporate Liability (Section 17A), Gifts Policy Information Centre, and the Corporate Integrity System Malaysia (CISM) Portal.[433]

[432] "Prevention Sector," *Malaysian Anti-Corruption Commission*, https://www.sprm.gov.my/index.php?id=21&page_id=91 (accessed June 18, 2019).
[433] Ibid.

These initiatives aim to enhance corruption prevention measures in the private sector, corporate companies, and government bodies. Active engagement and contribution from all individuals are highly crucial. Organisations can take several measures, such as conducting research to identify corruption vulnerabilities, implementing procedures to establish and update anti-corruption efforts, and establishing a review system to ensure ongoing enhancements.[434]

2.7.2.1 Corporate Integrity Pledge (CIP)

Corruption Integrity Pledge is another alternative to prevent corruption and illicit enrichment.[435] The Corporate Integrity Pledge or CIP is a formal written agreement that enables corporations or entities to commit themselves to upholding anti-corruption principles. Signatories of the CIP pledge not to engage in committing corruption and to actively implement ongoing anti-corruption measures. The CIP outlines standards for corporate entities to adopt in demonstrating their commitment to creating a business environment that is fair, transparent, and free from corruption. The principles serve as guidelines for describing the main focus and standards that corporations or entities should emphasise in assisting anti-corruption efforts in the country. The CIP's implementation is a component of the National Key Result Area (NKRA) Fighting Corruption, which is part of the Government Transformation Programme. Additionally, the CIP is essential in reforming the

[434] "Prevention Sector," *Malaysian Anti-Corruption Commission*, https://www.sprm.gov.my/index.php?id=21&page_id=91 (accessed June 18, 2019) & Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[435] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.



Universiti Utara Malaysia

public sector and continuously enhancing the private sector to enhance the country's progress towards becoming a developed country.[436]

2.7.2.2 National Anti-Corruption Plan (NACP) (2019-2023)

The National Integrity Plan (NIP) was implemented in 2004 to enhance the efficiency of anti-corruption initiatives. The NIP identified various elements that could weaken integrity in individuals, such as government systems and procedures, institutional structure, and organisational culture.[437] The National Integrity Plan (NIP) prioritises the development of a community focused on morality, with a committed effort to develop integrity and honesty as essential values. The NIP strives to promote a responsible and incorruptible society. One of its main goals is to minimise corruption, misconduct, and abuse of power effectively.[438] The Malaysian Institute of Integrity (IIM) was formed in 2004 to organise, advise, and monitor the actions of the National Integrity Plan (NIP). It was later rebranded as INTEGRITI in 2015. The NIP and INTEGRITI were intended to be the core components of a national integrity system for extensive transformation in Malaysia.[439]

Under National Anti-Corruption Plan 2019-2023, Tun Dr Mahathir Mohamad, the former Prime Minister of Malaysia, affirmed the government's commitment to

[436] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[437] World Bank Group, *Enhancing Government Effectiveness and Transparency. The Fight Against Corruption* (Kuala Lumpur, Malaysia, 2020).
[438] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[439] World Bank Group, *Enhancing Government Effectiveness and Transparency. The Fight Against Corruption* (Kuala Lumpur, Malaysia, 2020).

achieving Malaysia's aspiration of being acknowledged for its integrity and absence of corruption.

Malaysia's fight against corruption was significantly strengthened in 2018 when the Pakatan Harapan government was elected. The government promised a clean, accountable, and transparent administration, which appealed to the public in light of the 1MDB scandal. The first phase consisted of establishing the National Centre for Governance, Integrity, and Anti-Corruption (GIACC) as the administrative body of the secretariat of the Special Cabinet Committee for Anti-Corruption (JKKMAR), with direct reporting to the Prime Minister. The GIACC partnered with other organisations and departments to develop and initiate the National Anti-Corruption Plan (NACP) and is currently supervising its implementation. The main governing body responsible for implementing policies and regulations in Malaysia is the Malaysian Anti-Corruption Commission (MACC), which, together with another agency, serves as the major anti-corruption body in the country.[440]

Universiti Utara Malaysia

2.7.2.3 Corporate Liability (Section 17A)

Malaysia made significant progress in combating corruption by implementing the new Section 17A of the MACC Act that was gazetted on 4th of May 2018 and enforced on 1st of June 2020.[441] This section introduces a provision for corporate

[440] World Bank Group, *Enhancing Government Effectiveness and Transparency. The Fight Against Corruption* (Kuala Lumpur, Malaysia, 2020).
[441] "Section 17A MACC Act Enforced on 1st June 2020," *Malaysian Anti-Corruption Commission,*

liability for corruption offences in Malaysia.[442] It specifies that a company will be considered guilty if any person associated with the company engages in corrupt activities on behalf of the organisation.[443] Fundamentally, commercial organisations are accountable and subjected to possible punishment under Section 17A of the MACC Act 2009 (Amendment 2018) in cases where their employees or associates get involved in corruption crimes.[444] However, as a defence, commercial organisations can show that they have taken 'sufficient measures' to prevent individuals associated with the commercial organisations from participating in corrupt acts of bribery.[445]

Section 17A (1) of the MACC Act 2009 states that;

> *"A commercial organisation commits an offence if a person associated with the commercial organisation corruptly gives, agrees to give, promises, or offers to any person any gratification whether for the benefit of that person or another person with intent-*
>
> *a) To obtain or retain business for the commercial organisation; or*

---

https://www.sprm.gov.my/index.php?page_id=103&contentid=669&cat=CN&language=en#:~:text=The%20provision%20under%20Section%2017A,the%20benefit%20of%20the%20organisation.
& C., Kumar Pankaj, "Corporate Liability. Are You Ready?" *The Star*, November 23, 2019, https://www.thestar.com.my/business/business-news/2019/11/23/corporate-liability-are-you-ready.

[442] "Corporate Liability Provision: What It Is, and How Will My Company Be Affected," *The Association of Banks in Malaysia*, https://abm.org.my/archives/past-events-continual-learning/item/271-corporate-liability-provision-what-it-is-and-how-will-my-company-be-affected (accessed August 20, 2020).

[443] "Corporate Liability," *Malaysian Anti-Corruption Commission*, https://www.sprm.gov.my/en/prevention/prevention-strategy/inspection-and-consultation-2/corporate-liability (accessed August 20, 2020).

[444] Teh Athira Yusof, "MACC Enforces Corporate Liability Law Today*," New Straits Times,* June 1, 2020, https://www.nst.com.my/news/nation/2020/06/597044/macc-enforces-corporate-liability-law-today.

[445] "Corporate Liability," *Malaysian Anti-Corruption Commission*, https://www.sprm.gov.my/en/prevention/prevention-strategy/inspection-and-consultation-2/corporate-liability (accessed August 20, 2020).

*b) To obtain or retain an advantage in the conduct of business for the commercial organisation."*[446]

Section 17A criminalises an organisation for corrupt activities committed by anyone linked with the company for its profit. Prior to the recent modification to the Act, sanctions only applied to individuals. With the implementation of Section 17A, business organisations will now be held accountable for failing to prevent corrupt acts by their employees.[447]

9 months since the enforcement date of Section 17A in June 2020,[448] an offshore vessel support company, Pristine Offshore Sdn. Bhd. has become the first company in Malaysia to be charged with a newly introduced provision.[449] This will certainly be a first-test case under Corporate Liability Section 17A of the MACC Act 2009.[450] As of 2023, the case is still undergoing the prosecution process, and there has been no final verdict reported anywhere. When a commercial organisation is convicted, the prescribed penalty under Section 17A (2) is a monetary penalty that is equal to or less than ten times the amount of the bribe received, or RM1 million,

[446] Malaysian Anti-Corruption Commission Act 2009 [Act 694].
[447] C., Kumar Pankaj, "Corporate Liability. Are You Ready?" *The Star*, November 23, 2019, https://www.thestar.com.my/business/business-news/2019/11/23/corporate-liability-are-you-ready
[448] "First Case of Section 17A of the MACC Act," *Transparency International Malaysia*, March 2021, https://www.transparency.org.my/pages/news-and-events/press-releases/first-case-of-section-17a-of-the-macc-act
[449] Emir Zainul, "Offshore Vessel Company First to be Charged with MACC Act's New Corporate Liability Provision," *The Edge Markets*, March 2021, https://theedgemalaysia.com/article/offshore-company-first-be-charged-under-maccs-new-law
[450] "First Case of Section 17A of the MACC Act," *Transparency International Malaysia*, March 2021, https://www.transparency.org.my/pages/news-and-events/press-releases/first-case-of-section-17a-of-the-macc-act

whichever is higher. Alternatively, the penalty may include a sentence of up to 20 years.[451]

Section 17A's presumption clause shifts the burden to the commercial organisation and its office-bearers. Section 17A (3) states that if a commercial organisation is found accountable, an individual involved in the organisation's management at the time of the offence is considered to have committed the offence, unless they can show that the corrupt act occurred without their consent or involvement. They must also prove that they took appropriate measures to prevent the offence, considering their role and the circumstances. Furthermore, according to Section 17A (4), a commercial organisation can defend itself against the charge by demonstrating that it has sufficient measures in place to prevent individuals associated with the organisation from engaging in such behaviour.[452]

Universiti Utara Malaysia

Once enforcement begins under section 17A, the directors and top executives of the corporation will be personally accountable for any acts of corruption (or 'gratification') carried out by the organisation, whether by employees or persons working on behalf of the company.[453]

---

[451] Teh Athira Yusof, "MACC Enforces Corporate Liability Law Today*," New Straits Times,* June 1, 2020, https://www.nst.com.my/news/nation/2020/06/597044/macc-enforces-corporate-liability-law-today.

[452] C., Kumar Pankaj, "Corporate Liability. Are You Ready?" *The Star*, November 23, 2019, https://www.thestar.com.my/business/businessnews/2019/11/23/corporate-liability-are-you-ready.

[453] "Corporate Liability Provision: What It Is, and How Will My Company Be Affected," *The Association of Banks in Malaysia*, https://abm.org.my/archives/past-events-continual-learning/item/271-corporate-liability-provision-what-it-is-and-how-will-my-company-be-affected (accessed August 20, 2020).

The enforcement of a new provision is not just to penalise commercial organisations but rather to improve good governance practices within organisations and encourage the operation of business activities with integrity.[454] For publicly listed companies, having this in place is essential to maintaining investors' confidence in the company's business operations, since any actions taken by authorities can significantly harm the company's reputation.[455]

2.7.2.4 Anti-Bribery Management System (ABMS) MS ISO 370001:2016

The ISO 37001, Anti Bribery Management System (ABMS) (MS ISO 37001) 2016 is a system equivalent to current risk management tools, but it is specifically defined as the Anti-Bribery Management System (ABMS), Corruption Risk Management (CRM), and Integrity Assessment System (IAS).[456] ISO 37001 is designed to support an organisation in the development, implementation, maintenance, and improvement of a system to prevent bribery.

Universiti Utara Malaysia

These tools are essential for commercial companies to show that they are not responsible for corrupt activities committed by individuals related to them.[457] International Organisation for Standardization (ISO) is an international standard-setting organisation that established the Project Committee ISO (PC 278) in 2013. The ISO 37001 Anti-Bribery Management System was developed by a committee consisting of specialists from over 50 countries and international organisations,

[454] Teh Athira Yusof, "MACC Enforces Corporate Liability Law Today*," New Straits Times,* June 1, 2020, https://www.nst.com.my/news/nation/2020/06/597044/macc-enforces-corporate-liability-law-today.
[455] C., Kumar Pankaj, "Corporate Liability. Are You Ready?" *The Star*, November 23, 2019, https://www.thestar.com.my/business/businessnews/2019/11/23/corporate-liability-are-you-ready.
[456] Ibid.
[457] Ibid.

including Malaysia. The ISO 37001:2016 Anti-Bribery Management System (ISO 37001) was introduced in October 2016.[458]

ISO 37001/ MS ISO 37001 is a voluntary internal control system that helps businesses successfully manage, handle, enforce, evaluate, and enhance anti-corruption measures. It is an effective instrument that may be adapted to reduce the risks of corruption encountered by any organisations.[459]

The purpose of the standard is to help organisations show stakeholders that they have effectively implemented measures and activities to combat corruption.[460] The adoption of ABMS is interrelated with the provision under corporate liability law, Section 17A of the MACCA, in preventing corruption in organisations. As discussed under Corporate Liability Section 17A of the MACCA, any organisations involved in corruption crimes will be charged under Section 17A of the MACCA. According to Section 17(4), if a commercial organisation is accused of the violation described in sub-section 1 of Section 17, it can defend itself by showing that it had implemented adequate measures to prevent individuals related to the commercial organisation from engaging in such conduct, and the adequate measures is by implementing the ABMS system in organisation.[461]

Universiti Utara Malaysia

[458] Malaysian Anti-Corruption Commission (MACC), "*Anti-Bribery Management System (ABMS)*," https://www.sprm.gov.my/index.php?page_id=129&articleid=504&language=en. (accessed May 15, 2022).
[459] Ibid.
[460] Ibid.
[461] C., Kumar Pankaj, "Corporate Liability. Are You Ready?" *The Star*, November 23, 2019, https://www.thestar.com.my/business/businessnews/2019/11/23/corporate-liability-are-you-ready

So, the ABMS system itself will act as a tool to assist organisations to prevent and detect bribery in their organisations. The benefits of ABMS to the organisations are, it can act as supporting evidence to make organisations acquitted from offence under Section 17A of MACC Act 2009, provides legal evidence to the prosecutors or court showing that the organisations have taken all reasonable precautions in preventing bribery by adopting the system itself into their organisations. Besides, ABMS has the capacity to develop an environment that promotes integrity, transparency, openness, and compliance within organisations, helping them to avoid or reduce the costs, risks, and damage caused by bribery. Additionally, it develops trust and confidence in business activities, strengthens the organisation's standing, boosts employee morale, complies with laws, regulations, and ethical standards regarding honesty and corruption, increases public awareness of the organisation's efforts to combat bribery, and encourages and empowers individuals (both employees and the public) to report any cases of attempted, suspected, or actual bribery, with protections for these individuals.[462]

Meanwhile for prosecution, ABMS is highly related with Section 17A when the prosecution can prove that the act of corruption was executed up to criminal standards, with the individual connected to the company. The individual's objective was to ensure or preserve the business for the company or gain an advantage in

[462] Fauziah Sulaiman, *Anti-Bribery Management System (ABMS) : An Initiative to Strengthen the Corporate Integrity* (Kuala Lumpur, Malaysia, 2019).

managing the company's affairs. The verdict and punishment would not be for the offence of bribery but for the failure to prevent the crime.[463]

However, there are also challenges of ABMS to the organisation, such as lack of budget and resources allocated to implement and maintain the system,[464] the system is too dependent on Integrity Department / Integrity Officer and getting the buy-in from all levels of the organisations.

In conclusion to the Malaysian initiatives to fight corruption and illicit enrichment, the Malaysian government has implemented continuous efforts and established a comprehensive framework of strategies and organisations to combat corruption and strengthen integrity within society. Corruption within the public sector hinders the effectiveness of public services, reduces trust in public institutions, and increases the costs associated with public transactions. Integrity is crucial for establishing solid organisations that are resilient to corruption. Nevertheless, the measures and methods that have been taken by the government of Malaysia have not succeeded in stamping out corruption. There are no anticorruption measures known to man, and no nation worldwide can claim to have successfully eliminated corruption. Our sole objective is to limit corruption and make it a risky and unprofitable activity. Malaysia has been actively involved in these efforts since the establishment of the ACA in 1967. The government's commitment to addressing corruption is clearly demonstrated by the extensive range of legal and administrative measures and resources it has dedicated

[463] Fauziah Sulaiman, *Anti-Bribery Management System (ABMS) : An Initiative to Strengthen the Corporate Integrity* (Kuala Lumpur, Malaysia, 2019).
[464] Ibid.

to the ACA. The government must acknowledge that corruption is not solely about [465] bribery but rather includes the abuse of authorised power for personal benefit, despite the apparent presence of political will.

It is hoped that with the introduction of new initiatives by the Malaysian Anti-Corruption Commission, such as the ABMS system and corporate liability provisions under the MACC Act, corrupt practices by employees or related individuals will not only be reduced, but completely eliminated.[466] However, just like any other law, enforcement will be crucial to observing the impact of the law on companies and business activities, given that corruption and bribery are prevalent not only in the public sector but also in the private sector.[467]

According to Harun Hashim, public support is critical to eradicating corruption, and restoring public trust in the system is important. This includes ensuring an informant that their confidentiality will be protected, and they will not be victimised. Every piece of information is valuable and should be thoroughly examined and confirmed before being discarded. As the saying goes, "success breeds success," and successful prosecutions are very encouraging to the public.

Universiti Utara Malaysia

[465] Tunku Abdul Aziz, "International Case Study : Stamping Out Corruption in Malaysia," *113th International Training Course Visiting Experts' Papers* (2002): 398.
[466] C., Kumar Pankaj, "Corporate Liability. Are You Ready?" *The Star*, November 23, 2019, https://www.thestar.com.my/business/businessnews/2019/11/23/corporate-liability-are-you-ready.
[467] Ibid.

## 2.8 Conclusion

This chapter provided a comprehensive overview of essential terms and concepts related to corruption and illicit enrichment (IE), with a focus on public officials in Hong Kong, Malaysia, and Singapore. By examining the definitions and conceptual frameworks surrounding corruption, one can obtain a more comprehensive understanding of the diverse forms of it and their implications in various legal and social contexts.

Additionally, the historical context of corruption in Malaysia underscores the development of anti-corruption initiatives and highlights the fundamental issues that the nation is currently confronting. The chapter also explored the concept of wilful blindness and the broken window theory.

Universiti Utara Malaysia

Lastly, the chapter examined Malaysia's initiatives to combat corruption and IE, reflecting the country's ongoing commitment to transparency and accountability. Together, these elements build a foundational understanding for addressing corruption and fostering integrity within public institutions. Apart from studying and executing legislation related to illicit enrichment in foreign countries, the Malaysian authorities must be prepared for future possibilities in order to effectively prevent skilled and manipulative white-collar criminals from concealing their assets.[468]

[468] Akhbar Satar, *Corruption And Crime in Malaysia: Perception or Reality?,* 1st ed. (Kuala Lumpur: Akhbar & Associates, 2018), 35.

Therefore, considering the above discussion, Malaysia has issued so many initiatives to fight the various types of corruption crimes.

The various types of corruption showed that corruption happens in every aspect of life, including social, economic, and political aspects. According to the reported cases, there has been a concerning rise in the number of corrupt cases involving public servants and politicians. Corruption is a crime against society, as it undermines governmental decisions, results in ineffective allocation of resources, and benefits the corrupt while disadvantaging law-abiding citizens. Besides, it erodes moral authority, weakens the efficiency of state operations, increases opportunities for organised crime, encourages police brutality, adds to the taxpayer's burdens, affects the poor directly, and provides immunity for criminal acts, thereby allowing the law to be exploited by the most affluent individuals.[469]

Universiti Utara Malaysia

[469] Lawrence W. Sherman, *Scandal and Reform: Controlling Police Corruption.* (University of California Press, 1978).

# CHAPTER THREE

# THE INTERNATIONAL LEGAL FRAMEWORK ON ILLICIT ENRICHMENT AND ASSET DECLARATION

This chapter includes a discussion on international initiatives to combat corruption and illicit enrichment (IE), a detailed review of regulatory legal frameworks for illicit enrichment from other countries, the international legal framework on asset declaration (AD), and an analysis of the findings for Research Objective No. 3 and Research Question No. 3.

## 3.1 International Initiatives to fight Corruption and Illicit Enrichment

### 3.1.1 The IACAC

The Organisation of American States member countries enacted the Inter-American Convention Against Corruption (IACAC) on March 29, 1996. Following this, it was implemented on March 6, 1997.[470] The aforementioned international treaty was the main effort to tackle the corruption problem, serving as the initial mechanism to construct a worldwide legal structure aimed at eliminating bribery and corruption among public servants.[471] The main objective of the IACAC was to promote,

[470] John Hatchard, "Recent Developments in the Laws on Corruption and the Regulation of Conduct in Public Life: Implications for Law Teachers and Legal Research in the Commonwealth," *Journal of Commonwealth Law and Legal Education* 4, no. 2 (2006): 137.
[471] Luz Estella Nagle, "The Challenges of Fighting Global Organized Crime in Latin America," *Fordham International Law Journal* 26, no. 6 (2002).

support, and strengthen the essential systems required for the identification, prevention, punishment, and elimination of corruption within the State Parties. As of the year 2020, the Inter-American Convention Against Corruption (IACAC) has received ratification from 34 State parties, including Argentina, Canada, Colombia, Costa Rica, Brazil, Mexico, Peru, the United States of America, and several other American nations.[472]

The IACAC has implemented a significant measure by classifying illicit enrichment as a mandatory offence and requiring member states to comply with this offence. The IACAC has classified illicit enrichment as a criminal offence. As a result, some countries have included illicit enrichment as a criminal offence in their laws to strengthen their capacity to combat corruption.[473]

The offence, as described in Article 20 of the UNCAC on the definition of illicit enrichment, is similar to the definition found in the IACAC of the Organisation of American States (OAS). It refers to a significant increase in the assets of a government official that is not appropriately explained by their lawful income while carrying out their responsibilities. [474]

Universiti Utara Malaysia

[472] "Background of IACAC," *Organization of American States Secretariat for Legal Affairs,* 2011, https://www.oas.org/juridico/english/corr_bg.htm (accessed August 30, 2020).
[473] "Signatures and Ratifications," *Inter-American Convention against Corruption,* 2014, http://www.oas.org/juridico/english/Sigs/b-58.html (accessed August 30, 2020).
[474] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012),12.

### 3.1.2 The African Union Convention

In addition to the continent of America, the African Union has ratified the AUCPCC, which is the African Union Convention on Preventing and Combating Corruption. With the objective of tackling significant political corruption in Africa, the AUCPCC was enforced, commencing in July 2006.[475] In contrast to other agreements of a similar nature, the AUCPCC promotes the elimination of corruption in both the public and private sectors. The Convention contains a wide range of criminal offences, including money laundering, internal and external bribery, illicit enrichment, trading in influence, misuse of public funds, and asset misappropriation, and mainly consists of mandatory obligations. Furthermore, it requires the states involved to initiate transparent and redirected investigations into cases of corruption.[476] As of July 2020, the agreement has received ratification from 44 states, which are officially recognised as parties to the Convention. These nations include Algeria, Egypt, Kenya, Libya, Liberia, South Africa, Sudan, Uganda, Zimbabwe, Nigeria, and several other African countries.

AUCPCC prescribes illicit enrichment as an offence and provides definition for IE**.** However, AUCPCC treats illicit enrichment as an offence that is not mandatory. According to the AUCPCC, in cases where the legal framework permits, each signatory state that has not yet criminalised the offence is advised to provide

[475] John Hatchard, "Recent Developments in the Laws on Corruption and the Regulation of Conduct in Public Life: Implications for Law Teachers and Legal Research in the Commonwealth," *Journal of Commonwealth Law and Legal Education* 4, no. 2 (2006):139.
[476] Peter W. Schroth, "The African Union Convention on Preventing and Combating Corruption," *Journal of African Law* 49, no. 1 (2005): 24–38.

assistance and cooperation in connection with the offence. Additionally, they are encouraged to consider the possibility of criminalising the offence and must comply with their respective constitutional provisions.[477]

Latin American countries were among the first to criminalise the illicit enrichment, followed by several African countries. As of now, a minimum of forty-four countries has enacted IE legislation.[478] Ongoing efforts have been reported in several other countries, including Russia, Tunisia, and Romania, to enact legislation prohibiting the accumulation of ill-gotten wealth. Several countries around the world, such as Bangladesh, Bhutan, Argentina, Bolivia, Chile, China, Botswana, Brunei, Hong Kong, India, Algeria, Angola, Colombia, Ecuador, Costa Rica, Cuba, Egypt (Arab Republic), and several others, have implemented IE legislation.[479]

### 3.1.3 The UNCAC

Besides the IACAC and the African Union Convention, illicit enrichment has been criminalised in other global and regional anti-corruption treaties, including the United Nations Convention against Corruption (UNCAC). In October 2003, the United Nations General Assembly passed the United Nations Convention against Corruption (UNCAC), a significant anti-corruption treaty aimed at fighting

Universiti Utara Malaysia

[477] "Signatures and Ratifications," *Inter-American Convention against Corruption,* 2014, http://www.oas.org/juridico/english/Sigs/b-58.html (accessed August 30, 2020).
[478] Akeem Olajide Bello, "United Nations and African Union Conventions on Corruption and Anti-Corruption Legislations in Nigeria: A Comparative Analysis," *African Journal of International and Comparative Law* 22, no. 2 (2014).
[479] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012),12.

corruption.[480] The United Nations Convention against Corruption (UNCAC) was implemented on December 14, 2005, as the first worldwide instrument created to address corruption in both the private and public sectors.[481] The UNCAC established the basis for a truly global anti-corruption system,[482] representing a significant achievement as a global response to an international problem. As of February 6, 2020, 187 nations have ratified the UNCAC, demonstrating its uniqueness through the scope of its regulations and its global impact with an emphasis on the importance of preventative and punitive measures.

Countries or member states that have ratified the Convention are legally bound to provide practical help, including financial and human resources, research, and training, to every other state in their efforts to combat corruption. It is imperative to emphasise that many provisions of the UNCAC are obligatory, although some are highly recommended or optional.[483] Therefore, their impact and effectiveness depend on how they are enforced and applied within a country.[484]

Universiti Utara Malaysia

[480] Hannes Hechler, "UNCAC in a nutshell," *U4 Anti-Corruption Resource Centre*, 2017, https://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf (accessed September 30, 2020).
[481] John Hatchard, "Recent Developments in the Laws on Corruption and the Regulation of Conduct in Public Life: Implications for Law Teachers and Legal Research in the Commonwealth," *Journal of Commonwealth Law and Legal Education* 4, no. 2 (2006):137.
[482] Lucinda A. Low, "The United Nations Conventions Against Corruption: The Globalization of Anticorruption Standards," in *Conference of the International Bar Association International Chamber of Commerce Organization for Economic Cooperation and Development*, vol. 2 (London, England, 2006), 1–21, https://www.steptoe.com/images/content/1/6/v1/1600/2599.pdf.
[483] Hannes Hechler, "UNCAC in a nutshell," *U4 Anti-Corruption Resource Centre*, 2017, https://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf (accessed September 30, 2020).
[484] Lucinda A. Low, "The United Nations Conventions Against Corruption: The Globalization of Anticorruption Standards," in *Conference of the International Bar Association International Chamber of Commerce Organization for Economic Cooperation and Development*, vol. 2 (London, England, 2006), 1–21, https://www.steptoe.com/images/content/1/6/v1/1600/2599.pdf.

On December 9, 2009, the Secretary-General of the United Nations, Ban Ki-moon, made a declaration on International Anti-Corruption Day, saying that the UN Convention against Corruption is widely regarded as the most comprehensive legal instrument on a global scale for the purpose of fostering integrity and addressing corruption.[485] Currently, the UNCAC remains the only globally enforceable measure against corruption. The UNCAC represents a noteworthy achievement in the ongoing fight against corruption. It also adopts the structure of the now familiar five pillar approaches which are prevention, criminalisation, international co-operation, asset recovery and monitoring.[486]

The UN convention includes various forms of corrupt behaviour, such as the misuse of power or authority, the offering of bribes to foreign public officials and officials of international organisations, the bribery of national public officials, the concealment of illicit activities, the misappropriation of funds or assets by public officials, the embezzlement of private sector assets, the acquisition of wealth through illegal means, the laundering of illegally obtained funds, the obstruction of justice, and the illicit trading of influence.[487]

However, the UNCAC also considers illicit enrichment to be a non-mandatory offence. It proposes that states consider criminalising it as long as it complies with

[485] United Nations, "Review of Implementation of the United Nations Convention against Corruption," in *Conference of the States Parties to the United Nations Convention against Corruption,* (2017).
[486] John Hatchard, "Recent Developments in the Laws on Corruption and the Regulation of Conduct in Public Life: Implications for Law Teachers and Legal Research in the Commonwealth," *Journal of Commonwealth Law and Legal Education* 4, no. 2 (2006):140.
[487] Ettah B. Essien, "Corruption and Economic Development in Nigeria: A Materialistic Observation," *Journal of Economics and Sustainable Development* 3, no. 14 (2012): 37.

their constitutional requirements. States have the option to criminalise a number of crimes, such as the acceptance of bribes by international and foreign public officials, illicit enrichment, influence peddling, misuse of authority, bribery and fraud in private companies, money laundering, and concealing illicit assets. However, it is important to note that states are not legally obligated to do so.[488]

UNCAC classifies illicit enrichment as a non-mandatory crime, whereas IACAC defines it as a serious offence. Despite ratifying IACAC and UNCAC, both the United States and Canada have expressed objections about criminalising illicit enrichment, despite the fact that several countries have decided to criminalise it. The primary focus of their concerns refers to the extent to which criminalising illicit enrichment is inconsistent with constitutional standards and human rights principles, precisely the presumption of innocence.[489]

Nevertheless, these days, laws criminalising illicit enrichment can be found in almost all countries around the world. Even though Article 20 of UNCAC on illicit enrichment is controversial, and it is not compulsory for state countries to ratify the said article, some countries who choose not to criminalise illicit enrichment may

[488] Hannes Hechler, "UNCAC in a nutshell," *U4 Anti-Corruption Resource Centre*, 2017, https://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf (accessed September 30, 2020).
[489] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012). 9.

have ratified other ways to deal with it, for example, an approach that makes prosecuting or confiscating illicit proceeds easier.[490]

### 3.1.4 The European Union

In Europe, both the Council of Europe and the European Union have created significant anti-corruption initiatives. However, there has been an organised attempt to connect their approaches. The European Union (EU) has prioritised combating corruption. Article 29 of the EU Treaty aims to prevent and combat corruption as part of the effort to establish a European area of freedom, security, and justice. This involves enhancing collaboration among police forces, customs authorities, and other relevant authorities in the Member States, both directly and through the European Police Office (Europol). Furthermore, enhancing collaboration between judicial and other competent authorities of the Member States and harmonising the criminal laws of the Member States will help combat corruption. The European Union (EU) has implemented a number of initiatives, including the 1997 Agreement on Combatting Corruption Involving Authorities of the European Communities or Authorities of Member States of the European Union. This agreement makes it illegal for officials from both the Community and Member States to engage in corrupt behaviour. In addition, the 2003 Framework Decision on Combatting Corruption in the Private Sector seeks to criminalise both active and passive corruption in the private sector

[490] Joanna Macmillan, "Reformasi and Public Corruption: Why Indonesia's Anti-Corruption Agency Strategy Should be Reformed to Effectively Combat Public Corruption," *Emory International Law Review* 25, no. 1 (2011): 587–630, https://scholarlycommons.law.emory.edu/eilr/vol25/iss1/13.

across all Member States, noting that legal[491] persons can also be held responsible for such misconduct, and that these offences lead to sanctions that are efficient, proportionate, and deterrent.[492]

### 3.1.5 The Asia-Pacific Region

There is no official measure against corruption in the Asia-Pacific area. However, an initiative was launched in 2000 by the Asian Development Bank (ADB) and the Organisation for Economic Cooperation and Development (OECD). (ADB-OECD Anti-corruption initiative for Asia and the Pacific) saw the development of the Anti-Corruption Action Plan for Asia and the Pacific.[493]

The Anti-Corruption Initiative for Asia and the Pacific (ACI) outlines specific methods to tackle corruption in the private sector, governments, and civil society. During the third conference held in November 2001, an Action Plan was approved, which was formally endorsed by seventeen economies and countries operating in the

Universiti Utara Malaysia

[491] John Hatchard, "Recent Developments in the Laws on Corruption and the Regulation of Conduct in Public Life: Implications for Law Teachers and Legal Research in the Commonwealth," *Journal of Commonwealth Law and Legal Education* 4, no. 2 (2006): 138.
[492] EUR-Lex, "Council Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector," https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003F0568.
[493] ADB-OECD Anti-Corruption Initiative for Asia-Pacific Combating Corruption in the New Millennium, "Effective Prosecution of Corruption," 2003. https://read.oecdilibrary.org/governance/effective-prosecution-of corruption_9789264041394-en#page1.

Asia-Pacific region. Currently, twenty-eight countries[494] have officially supported and committed to the plan's objectives.[495]

The Action Plan comprises a set of non-binding principles and standards centred around three pillars of action. Pillar 1 focuses on creating efficient and clear mechanisms for the public service. Pillar 2 focuses on enhancing anti-bribery efforts and promoting integrity in business operations, while Pillar 3 emphasises the need for developing public engagement in the fight against corruption. The Action Plan is implemented through two main principles: a review process relying on self-assessment reports and the provision of specific and practical support to governments on key reform issues.[496]

### 3.1.6 The OECD Convention

The OECD has been highly engaged in addressing anti-corruption issues, notably through its support for the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This was implemented in February 1999 and mandates State Parties[497] to make 'active bribery' a criminal offence, for example, the offering, promising, or giving of bribes to foreign public

[494] The countries endorsing statements include Malaysia, Singapore, Hong Kong, Australia, Japan, Thailand, Pakistan, Cambodia, Bangladesh, India, Republic of Korea and etc. & ADB-OECD Anti-Corruption Initiative for Asia-Pacific Combating Corruption in the New Millennium, "Effective Prosecution of Corruption," 2003. https://read.oecdilibrary.org/governance/effective-prosecution-of_corruption_9789264041394-en#page1.
[495] Asia Regional Integration Center, "ADB-OECD Anti-Corruption Initiative for Asia and the Pacific," in *Asian Development Bank*, 2015, https://aric.adb.org/initiative/adb-oecd-anti-corruption-initiative-for-asia-and-the-pacific.
[496] John Hatchard, "Recent Developments in the Laws on Corruption and the Regulation of Conduct in Public Life: Implications for Law Teachers and Legal Research in the Commonwealth," *Journal of Commonwealth Law and Legal Education* 4, no. 2 (2006):139.
[497] Ibid.

officials in the conduct of international business. This is the first and only international anti-corruption instrument to specifically address the 'supply side' of the bribery transaction.[498]

State parties are obligated to implement an extensive range of preventive and enforcement measures in pursuit of this objective. The inclusion of a peer review mechanism enables systematic monitoring and follow-up procedures.[499] As of September 2023, thirty-eight OECD countries namely, Australia, Argentina, Canada, Japan, Korea, United Kingdom, United States and etc and seven non-OECD countries[500] have adopted and ratified this Convention.[501]

3.1.7 The Commonwealth

The Secretary General of the Commonwealth has established an Expert Group on Good Governance to examine and analyse methods of promoting good governance and reducing corruption in economic management in response to concerns regarding the negative effects of corruption.[502] The Framework principles, which comprised the Commonwealth Principles on Promoting Good Governance and Combating Corruption, were outlined in its final report. These address five areas, first, the

[498] The OECD Anti-Bribery Convention, "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions," https://www.oecd.org/corruption/oecdantibriberyconvention.htm.
[499] The OECD Anti-Bribery Convention, "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions," cited in John Hatchard, "Recent Developments in the Laws on Corruption and the Regulation of Conduct in Public Life: Implications for Law Teachers and Legal Research in the Commonwealth," *Journal of Commonwealth Law and Legal Education* 4, no. 2 (2006): 137–155.
[500] Argentina, Brazil, Bulgaria, Peru, Romania, Russia and South Africa.
[501] Convention on Combating Bribery of Foreign Public Officials in International Business Transactions OECD, "Ratification Status as of September 2023," https://web-archive.oecd.org/2023-09-22/159857-wgb-ratification-status.pdf.
[502] The Commonwealth, "Tackling Corruption," https://thecommonwealth.org/our-work/tackling-corruption.

necessity of fostering integrity and ethics in both the public and private sectors. Second, it is essential to implement economic and fiscal reforms that are structured to optimise transparency while reducing administrative discretion. Third, the necessity to enhance public service administration, delivery, and efficiency. Fourth, the necessity of establishing a judiciary that is impartial, competent, and answerable to the public, and finally, the commitment to consistent communication and collaboration with civil society regarding the planning of anti-corruption strategies.[503]

In November 1999, Commonwealth Heads of Government approved the Framework Principles as a foundation for implementing coordinated efforts to address various forms of corruption nationally and globally.[504] They asked the Commonwealth Secretary-General to develop initiatives to help implement the Framework and to provide regular updates on its progress. They highlighted that corruption has spread worldwide and needs to be addressed thoroughly through actions on both national and international levels. They pledged to adopt a 'zero tolerance' policy, acknowledging that any effort to enhance good governance and eradicate corruption required solid political determination at the highest levels of government.[505]

Universiti Utara Malaysia

[503] John Hatchard, "Recent Developments in the Laws on Corruption and the Regulation of Conduct in Public Life: Implications for Law Teachers and Legal Research in the Commonwealth," *Journal of Commonwealth Law and Legal Education* 4, no. 2 (2006):142.
[504] Ibid.
[505] Ibid.

In conclusion, most conventions define and acknowledge the crime of IE, however, it is not compulsory for state parties to criminalise IE in their jurisdictions. As the issue and concern of illicit enrichment escalate, countries around the world have incorporated illicit enrichment into significant international anti-corruption treaties. Undoubtedly, this has significantly improved the prevention of crime. Illicit enrichment was initially incorporated in the Inter-American Convention Against Corruption (IACAC) by the Organisation of American States (OAS) in 1996, then in the African Union Convention on Preventing and Combating Corruption (AUCPCC) in 2003, and finally in the United Nations Convention Against Corruption (UNCAC) in 2003, which came into effect in 2005.[506] These three conventions have been contributing to the accelerated pace of illicit enrichment and its worldwide acknowledgment. Indeed, UNCAC, IACAC, and AUCPCC advocate the idea that illicit enrichment should be considered a criminal offence. The primary objective of these conventions is to eradicate corruption within public sectors by providing a clear definition and elements of illicit enrichment, to promote stability among nations.[507]

The efforts by the international conventions to fight corruption must be recognised because corruption and the issue of illicit enrichment is complex and needs a range

[506] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012), 9.

[507] "Signatures and Ratifications," *Inter-American Convention against Corruption,* 2014, http://www.oas.org/juridico/english/Sigs/b-58.html (accessed August 30, 2020).

of legal and non-legal approaches.[508] The effort of each state party and country to ensure that the law is executed and applicable for every citizen is necessary in order to fight corruption and IE because, even when laws are in place, sometimes the regulations are not applied, or if they are, they tend to focus on minor offenders rather than major ones, or they are selectively enforced against former political rivals who no longer hold public positions. Hence, the mere criminalisation of bribery is, in itself, inadequate and ineffective. Therefore, the objective of having a comprehensive set of laws and regulations is essential to effectively address and prevent systemic corruption in a developing society, increase the chances of detecting and punishing corruption, and reduce the probability of people benefiting from their corrupt actions, such as those who offer or receive bribes.[509]

Universiti Utara Malaysia

### 3.2 Regulatory legal frameworks for illicit enrichment worldwide and other countries' experiences with the offence of corruption and illicit enrichment.

Governments internationally often face significant procedural challenges when trying to identify and prosecute their officials involved in corrupt behaviour, as such misconduct usually remains undetected.[510] Public officials and private sector associates usually engage in secret, illegal agreements without any third-party

[508] John Hatchard, "Recent Developments in the Laws on Corruption and the Regulation of Conduct in Public Life: Implications for Law Teachers and Legal Research in the Commonwealth," *Journal of Commonwealth Law and Legal Education* 4, no. 2 (2006): 144.
[509] Nihal Jayawickrama, "A Holistic Approach to Combating Corruption," *Commonwealth Law Bulletin* 25, no. 2 (1999): 665.
[510] Mohannad Ahmad Abu-Morad, Zainal Amin Ayub, and Fauziah Mohammad Noor, "The Law on the Illicit Enrichment Crime and Financial Disclosure in Jordan: Issue of Effectiveness and Enforceability," *The Journal of Social Sciences Research* 2, no. 5 (2016).

records or witnesses. The apparent increase in wealth among these individuals could only indicate that they are involved in corrupt activities. For example, they may acquire expensive homes, buy expensive cars, and enjoy expensive vacations. Governments around the world, frustrated by the increasing number of corrupt officials, have implemented a comprehensive legislative framework to address the issue of corruption. The concept of illicit enrichment refers to a substantial increase in the assets of a government official that cannot be reasonably justified by their lawful earnings during their term in office. The unexplained accumulation of significant wealth by an official is commonly regarded as a form of corruption. The offence comprises five main elements and aspects: a public servant experiencing a significant increase in wealth and possessions within a specific period of time, done intentionally and knowingly without adequate justification.[511]

In order to understand the legal framework pertaining to illicit enrichment and anticorruption as a whole, it is necessary to begin with a concise overview of recent international developments in criminal law that aim to prevent acquisitive crimes. Over the past two decades, criminal law and law enforcement theory have experienced a quiet revolution. Since the eighteenth century, criminal law has followed a consistent framework focused on establishing the circumstances under which the state might legally take away an individual's basic right to personal freedom. Acquisitive crimes, which are crimes that result in profits, have seen a

[511] Peter W. Schrotch and Ana Daniela Bostan, "International Constitutional Law and Anti-Corruption Measures in the European Union's Accession Negotiations: Romania in Comparative Perspective," *The American Journal of Comparative Law* 52, no. 3 (2004).

transition from the traditional theory to a new profit-focused paradigm in criminal law. This social control policy now prioritises eradicating unlawfully acquired profits over restricting personal freedom. This new concept has been invading the traditional paradigm, forcing a re-evaluation of multiple old interpretations. [512]

The Malawian Corrupt Practices Act 1995 and the Argentina Criminal Code are among the legal frameworks that deal with the issue of illicit enrichment. These frameworks require the presence of a documented record that proves the misuse or exploitation of governmental authority, as well as an apparent connection to the acquired assets.[513] Illicit enrichment is commonly treated as a traditional form of corruption, requiring specific and provable illicit activity. In different legal jurisdictions, such as the Prevention and Fight against Corruption Act in Algeria and the Prevention of Corruption Act in Brunei, possessing income or assets in excess of what is expected to come from lawful sources is unlawful. Therefore, an increase in unexplained assets owned by public officials may be used as the only evidence.[514]

The role of government and anti-corruption agencies is of utmost importance in addressing corruption within a country, as well as implementing international treaties, given that corruption has become a global concern and the complexity of

[512] Guillermo Jorge, *The Romanian Legal Framework on Illicit Enrichment* (Washington, DC., 2007), 13.
[513] Lindy Muzila, Eric and Yang, and Urbanavicius Saulius, "Investigation and Prosecution of Corruption: Bribery, Illicit Enrichment and Liability of Legal Persons," in *OECD Anti-Corruption Network for Eastern Europe and Central Asia* (Georgia, 2013).
[514] Lindy Muzila, Eric and Yang, and Urbanavicius Saulius, "Investigation and Prosecution of Corruption: Bribery, Illicit Enrichment and Liability of Legal Persons," in *OECD Anti-Corruption Network for Eastern Europe and Central Asia* (Georgia, 2013).

these illicit activities have escalated in parallel with economic development.[515] Over the previous decade, many cases of corrupt behaviour have been reported, including illicit enrichment.[516]

This chapter highlights the importance of having illicit enrichment as a punishable offence in anti-corruption legislation, although only a few countries have criminalised it. It emphasises the need to include it to strengthen the fight against corruption more broadly and effectively. The scope of this chapter focuses on the illicit enrichment of public officials, with a special reference to the situations in Singapore, Hong Kong, Argentina, and Egypt.

### 3.2.1 Singapore

In Singapore, during the British colonial period, the situation was quite different because corruption remained a serious problem throughout the colonial period as the British failed to curb it.[517] Following the 1959 assumption of power by the People's Action Party (PAP), a comprehensive anti-corruption campaign commenced.[518] When Singapore gained its independence in 1959, corruption was widespread and entrenched, despite the existence of the Corrupt Practices Investigation Bureau (CPIB).[519] The CPIB is the official agency that was founded with the specific

[515] Humberto Marquez, "Americas: Pioneers in the Fight Against Corruption," *Inter Press Service*, 1996. http://www.ipsnews.net/1996/03/ameri cas-pioneers-in-the-fight-against-corruption.
[516] Mesay Tsegaye Meskele, "The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law," (master's thesis, Faculty of Law, University of the Western Cape, South Africa, 2012).
[517] Jon S.T. Quah, "Combating Corruption in Singapore: What Can Be Learned?," *Journal of Contingencies and Crisis Management* 9, no. 1 (2001): 29.
[518] Ibid.
[519] Ibid.

purpose of curbing corruption. It was established in 1952 in accordance with the Prevention of Corruption Ordinance (PCO). The legislation was subsequently renamed the Prevention of Corruption Act (Chapter 241).[520] The Prevention of Corruption Act 1960 is the main legal framework in Singapore that allows the implementation of a self-governing or independent body, the CPIB.[521]

The CPIB is solely dedicated to the investigation of corrupt activities and the gathering of evidence for prosecution.[522] The primary duties of the CPIB include receiving and examining complaints related to corruption in both the public and private sectors, investigating malpractices and misconduct by public officers, and examining the practices and procedures within the public service to reduce the possibility of corrupt activities.[523] In addition, the strict and consistent implementation of anti-corruption legislation by the CPIB has played a crucial role in ensuring the success of the anti-corruption effort in Singapore.[524] In addition to a strong and comprehensive legislative framework and strict enforcement of the laws, a competent anti-corruption agency, an effective judiciary, and political commitment all play important roles in combating corruption in Singapore.[525]

Universiti Utara Malaysia

[520] Mesay Tsegaye Meskele, "The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law," (master's thesis, Faculty of Law, University of the Western Cape, South Africa, 2012).
[521] Jon S.T. Quah, "Combating Corruption in Singapore: What Can Be Learned?," *Journal of Contingencies and Crisis Management* 9, no. 1 (2001): 29.
[522] John R. Heilbrunn, *Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption* (Washington, D.C.: World Bank Institute, 2004), 6.
[523] Jon S.T. Quah, "Combating Corruption in Singapore: What Can Be Learned?," *Journal of Contingencies and Crisis Management* 9, no. 1 (2001): 33.
[524] Ibid., 20.
[525] Ibid.

Furthermore, the Corruption, Drug Trafficking, and Other Serious Crimes (Confiscation of Benefits Act of 1999) was established to enable the seizure of profits derived from illicit activities.[526] This Act grants the CPIB significant power while also imposing severe penalties for corruption. Singapore's anti-corruption legislation is known for its deterrent effect. A corruption conviction may result in a $100,000 fine and five years in prison.[527] In addition to any additional sentences the court may impose, a person found guilty of corruption must pay the amount they received as a bribe.[528]

Other corrupt practices, such as illicit enrichment and other forms of benefits[529] in both the public and private sectors, are punishable and criminalised.[530] As mentioned under the conceptual definition of illicit enrichment in Chapter 3, subtopic 3.1.2, Singapore has adopted a provision that is similar to the definition of illicit enrichment, however, Section 21 of the Prevention of Corruption Act (Chapter 241): "*Public Prosecutor's Powers to Obtain Information"* does not define illicit enrichment expressly, but an assumption can be made of the underlying meaning of illicit enrichment.[531] The said provision for IE is similar to Section 36 of the

[526] Centillion Environment & Recycling Ltd (formerly known as Citiraya Industries Ltd) v Public Prosecutor and others and another appeal [2013] 1 SLR 444
[527] See Section 5 of the Prevention of Corruption Act (Chapter 241).
[528] Please refer to Section 13 of the Prevention of Corruption Act Singapore, and Jon S.T. Quah, "Combating Corruption in Singapore: What Can Be Learned?," *Journal of Contingencies and Crisis Management* 9, no. 1 (2001).
[529] ADB-OECD Anti-Corruption Initiative for Asia-Pacific, "Anti-Corruption Policies in Asia and the Pacific: The Legal and Institutional Frameworks for Fighting Corruption in Twenty-One Asian and Pacific Countries," 2004, 32. and please refer to Prevention of Corruption Act (Chapter 241).
[530] John R. Heilbrunn, *Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption* (Washington, D.C.: World Bank Institute, 2004), 6.
[531] Karen Zadoyan et al., *International Experience of the Criminalisation of Illicit Enrichment, and the Possibilities of Criminalising Illicit Enrichment in Armenia*, 2014.

MACCA. According to Section 21 of the Prevention of Corruption Act, having unexplained income is not an offence per se. However, sections 20 to 21 of the Prevention of Corruption Act grant the investigating agencies wide powers to gather information about the bank accounts, property, and possessions of a public servant, their spouse, or their children.[532] With this information, commissions of corruption or embezzlement offences by public servants can be detected more easily. In this regard, by virtue of Section 24 of the Prevention of Corruption Act, in any court proceedings against a public servant, the fact that he or she is unable to satisfactorily account for pecuniary resources or property in his possession that are "disproportionate to his known sources of income" may be proved and used against him or her in the said proceeding.[533] Even though there is no clear and direct definition of illicit enrichment under its law, Sections 20 and 21 of the Prevention of Corruption Act grant the agencies wide powers to investigate a public servant whose disproportionate assets exceed his income.

Universiti Utara Malaysia

According to the Country Review Report of Singapore by the UNCAC, the Prevention of Corruption Act is currently being reviewed and specific offences of misconduct in public office and illicit enrichment are under consideration. The reviewers welcome indications by Singapore that it is considering amending the Prevention of Corruption Act to establish specific offences on misconduct in public office, which would not be limited to the taking or acceptance of gratification, as

[532] United Nations Convention against Corruption. *Country Review Report of Singapore,* 2010-2015.
[533] Ibid.

well as illicit enrichment. It was explained that CPIB is currently considering the possibility of incorporating offences relating to criminalizing illicit enrichment in the the Prevention of Corruption Act and amending the PCA to establish a specific offence of illicit enrichment.[534]

In order to successfully control and fight corruption, it is crucial to implement anti-corruption measures and strategies, such as enacting comprehensive anti-corruption laws and establishing an effective and independent anti-corruption agency. A comprehensive anti-corruption legislation framework is essential to closing any possible loopholes and should be regularly reviewed in order to make necessary improvements.[535]

Besides that, the ongoing strategy of the Singaporean government to combat corruption is to acknowledge the importance of a merit-based civil service that is adequately paid. The salaries of civil servants are evaluated annually and are comparable to those in the private sector. The Prime Minister and his Singapore counterpart not only led by example, but they also showed zero tolerance against corruption.[536]

Singapore is one of the countries that have successfully controlled corruption,[537] even though it has no specific law on illicit enrichment. It is a leading country in

[534] United Nations Convention against Corruption. *Country Review Report of Singapore,* 2010-2015.
[535] Jon S.T. Quah, "Combating Corruption in Singapore: What Can Be Learned?," *Journal of Contingencies and Crisis Management* 9, no. 1 (2001): 34.
[536] Ibid.
[537] According to Transparency International's Corruption Perceptions Index of 2022, Singapore has scored 83 and ranked 5th among 180 states and territories, being the cleanest country in the world.

addressing corruption in Southeast Asia. Singapore scored 83 out of 100 on the Corruption Perception Index (CPI) 2022, as reported by Transparency International. This ranking places Singapore as the fifth least corrupt country worldwide.[538] An essential component in Singapore is a solid and comprehensive legal framework, as corruption has the potential to cause significant political, economic, and social instability. [539]

### 3.2.2 Hong Kong

The historical chronology of Hong Kong's efforts to address corruption is discussed as follows. During the 1960s and early 1970s, corruption was a fact of life, and it was a major problem in Hong Kong.[540] Normal business practice was bribery under the table, and half the population of Hong Kong acknowledged that corrupt act.[541] Corruption in the Royal Hong Kong Police was widespread. Illegal activities included drug trafficking, gambling, sex exploitation, and bribes related to traffic violations. A group of police officers was part of a syndicate, where they collected and distributed money. Public outrage demanded immediate reforms. In 1973, British Governor Mr. Maclehose introduced the Independent Commission Against Corruption (ICAC) to replace the internal anti-corruption department. The ICAC

Universiti Utara Malaysia

[538] Please refer to Table 1.1 Corruption Perceptions Index 2017-2022, in Chapter 1, Page 4.
[539] Halil Paino, Khairul Anuar Abdul Hadi, and Nafsiah Mohamed, "Corruption: A Comparison between Singapore and Malaysian Legal Regime," *Malaysian Accounting Review* 15, no. 1 (2016): 275–285.
[540] Mesay Tsegaye Meskele, "The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law," (master's thesis, Faculty of Law, University of the Western Cape, South Africa, 2012).
[541] Jon S.T. Quah, *Curbing Corruption and Enhancing Trust in Government: Some Lessons from Singapore and Hong Kong*, in Handbook of Asian Criminology (New York: Springer Science+Business Media, 2013).

consisted of three main components: the Operations Department to raise the costs of corruption, the Corruption Prevention Department to restructure government bodies and minimise corruption opportunities, and the Community Relations Department to change public perceptions of corruption.[542]

The Independent Commission Against Corruption (ICAC) was established in accordance with the Independent Commission Against Corruption and Matters Incidental Thereto Ordinance 7 of 1974 to address the significant risk that corruption posed to several government departments. This body operates independently from any executive branch of the government and is accountable to the Chief Executive.[543]

In 1974, a group of researchers, consisting of civil servants from Hong Kong, conducted a visit to Singapore with the purpose of examining their anti-corruption legislation. As a result, Hong Kong decided to adopt Singapore's approach to addressing corruption, which placed significant emphasis on the establishment of an Anti-Corruption Agency (ACA) by the Corrupt Practices Investigation Bureau (CPIB).[544] On February 15, 1974, Hong Kong incorporated the Prevention of Corruption Act of Singapore into its Prevention of Bribery Ordinance.[545]

Particularly with respect to illicit enrichment control, this concern has been raised since 1948, when a Prevention of Corruption Ordinance authorised authorities to

[542] The history of the ICAC is well described in Robert Klitgaard, "Chapter 4: Graft Busters: When and How to Set Up an Anticorruption Agency," in *Controlling Corruption*, 1991. Cited in Jorge Guillermo, *The Romanian Legal Framework on Illicit Enrichment* (Washington, DC., 2007).
[543] Melanie Manion, *Corruption by Design: Building Clean Government in China and Hong Kong* (Harvard University Press, 2004). And see also Chapter 204 Section 17 of ICAC Ordinance.
[544] Jon S.T. Quah, *Curbing Corruption in Asian Countries: An Impossible Dream?* Emerald Group Publishing Limited, 2011.
[545] Ibid.

inspect a suspect's financial accounts to support the accusation of a particular corrupt transaction. In 1959, this authority was expanded. A magistrate has the authority to investigate a government official's lifestyle and financial resources. If they are found to exceed what is expected based on their official duties, the official may be terminated. In 1971, the government enacted a Prevention of Bribery Ordinance that shifted the burden of proof in cases involving unexplained wealth. The ordinance states that in legal proceedings initiated against an individual for violating this law, the responsibility to provide proof of a defence of lawful authority or reasonable excuse lies with the accused. The changes immediately affected the police force, resulting in 295 police officers, including 2 superintendents and 26 inspectors, retiring early or resigning within a year. Over the course of 25 years, around 50 cases have been prosecuted for the offence.[546]

Illicit enrichment is drafted in Section 10 of the Prevention of Bribery Ordinance (Chapter 201) (POBO), as mentioned in the conceptual definitions of illicit enrichment as possession of the unexplained property. The section creates a statutory presumption of unexplained wealth placing the burden of proof on the accused public official to provide a "satisfactory explanation" of his standard of living or how he acquired his property.[547]

[546] Bertrand De Speville, "Reversing the Onus of Proof: It Is Compatible with Respect for Human Rights Norms," in *8th International Anti-Corruption Conference*, 1997. Cited in Guillermo Jorge, The Romanian Legal Framework on Illicit Enrichment (Washington, DC., 2007).
[547] Guillermo Jorge, *The Romanian Legal Framework on Illicit Enrichment* (Washington, DC., 2007), 13.

The ICAC has the power to enforce an individual's obligation to disclose their assets if they hold significant wealth that exceeds the earnings associated with their salary and employment.[548] The ICAC was established through legislative measures that outlined a comprehensive, three-pronged strategy to address corruption, including prevention, investigation, and education.[549] In order to address corruption through educational initiatives, the commission employs a range of methods to foster public cooperation and confidence. These include promoting participation by the public to deter corruption and providing financial support for educational programmes and sporting events. To uphold public confidence in ICAC's operations, a Corruption Prevention Advisory Committee is established to ensure that the public is involved in the process of policy development when deciding to discontinue an investigation.[550]

Besides, the ICAC is headed by the Commissioner, who directly reports to the Chief Executive of Hong Kong.[551] The ICAC is an independent organisation, and according to Article 57 of the Basic Law of Hong Kong, the ICAC must function independently and be accountable directly to the Chief Executive of Hong Kong.[552] The ICAC functions independently and separately from the police force, remains unaffected by

[548] Yina Mao, Chi Sum Wong, and Kelly Z. Peng, "Breaking Institutionalized Corruption: Is the Experience of the Hong Kong Independent Commission against Corruption Generalizable?" *Asia Pacific Journal of Management* 30, no. 4 (2013).
[549] Booz Allen Hamilton, *Comparative Evaluation of Unexplained Wealth Orders*, 2012.
[550] Yina Mao, Chi Sum Wong, and Kelly Z. Peng, "Breaking Institutionalized Corruption: Is the Experience of the Hong Kong Independent Commission against Corruption Generalizable?" *Asia Pacific Journal of Management* 30, no. 4 (2013).
[551] The Central People's Government of the People's Republic of China, "Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China," last modified 2013, https://www.gov.cn/test/2005-07/29/content_18298.htm.
[552] Independent Commission against Corruption (ICAC), "Hong Kong Special Administrative Region," https://www.icac.org.hk/tc/ops/duty/index.html. & The Central People's Government of the People's Republic of China, "Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China," last modified 2013, https://www.gov.cn/test/2005-07/29/content_18298.htm.

political pressures, and operates independently from public officials. Corruption fighters at the ICAC earn competitive salaries and are subject to strict disciplinary procedures, including anti-corruption assessments conducted by an internal monitoring body.[553] In Hong Kong, public officials' salaries are comparable to those of private sector employees and are revised annually.

The privilege of being independent gives the ICAC significant authority to fulfil its job without any interference from political entities. The ICAC implemented a three-pronged strategy to combat corruption, consisting of prevention, prosecution, and education. The objectives of the organisation, as stated by its former Director of Administration, Mr. Andrew HY Wong, are to effectively enforce anti-corruption laws, identify and eliminate cases of corruption within government institutions, encourage corruption prevention in the private sector, educate the community about the negative effects of corruption, and gain their support in the fight against corruption.[554] Additionally, it has been reported that the ICAC has made significant progress in eliminating corruption inside public institutions.

It is also indicated that the ICAC investigates any offence that has connections with corruption, involving the public and private sectors.[555] The criminalisation of offences includes bribery, illicit enrichment, and accepting gifts, discounts and

[553] Booz Allen Hamilton, *Comparative Evaluation of Unexplained Wealth Orders*, 2012.
[554] Mesay Tsegaye Meskele, "The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law," (master's thesis, Faculty of Law, University of the Western Cape, South Africa, 2012).
[555] Examples of corruption cases involving the public and private sectors in Hong Kong are further illustrated below, in subtopic 3.4.

loans.[556] ICAC is the leading anti-corruption organisation that has effectively enforced legislation against corruption in the private sector, as well as raised public awareness and promoted international cooperation. The ICAC is regarded as the most effective law enforcement agency in the fight against corruption due to its dedication and independence, as well as the availability of competent professionals, resources, and political support.[557]

Hong Kong has effectively demonstrated its ability to fight corruption through its extensive legislative regime and the presence of independent and strong anti-corruption institutions. Presently, Hong Kong is acknowledged as one of the cleanest places in the world. Countries battling corruption can derive significant lessons from Hong Kong's experience. A few countries, like Ethiopia, have learned from the ICAC's experience and implemented a three-stage strategy to fight corruption.[558]

Universiti Utara Malaysia

Even though there is no single approach to fighting corruption, it is most important to have an effective legal framework. Hong Kong is known for its comprehensive legislative framework. The Hong Kong experience shows that a practical set of institutions and a comprehensive anti-corruption plan are necessary to succeed in an anti-corruption drive. The discussion in this section indicates that Hong Kong's

[556] Please refer to Section 3 and 10 of the Prevention of Bribery Ordinance (Chapter 201), and Tony Kwok Man-Wai, "Effective Measures to Combat Corruption in Hong Kong," *19th UNAFEI UNCAC Training Programme Visiting Experts' Papers Resource Material Series No.101* (2017).
[557] Mesay Tsegaye Meskele, "The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law," (master's thesis, Faculty of Law, University of the Western Cape, South Africa, 2012).
[558] Ibid.

legislative framework has extensive reach, addressing corruption in private businesses and situations where public officials accept benefits, even if they are not directly linked to corrupt activities.

The Hong Kong Prevention of Bribery Ordinance (Chapter 201) (POBO) imposes severe penalties on illicit enrichment, which is the subject matter of this paper, to prevent such conduct. Illicit enrichment is punishable by both imprisonment and monetary penalties. Those found guilty of illicit enrichment could be subject to a maximum prison term of ten years and fines of up to HK$1,000,000.[559] Two punishable offences in Section 10 of the ordinance are possessing disproportionate assets and living beyond one's means.[560]

The commitment to combating corruption by Hong Kong includes a comprehensive legal framework. In addition to specific measures targeting illicit enrichment, Hong Kong also has its own anti-money laundering provisions, highlighting its dedication to fighting corruption. Malaysia and Hong Kong have established robust legal frameworks to combat money laundering and terrorism financing. Malaysia's legislation is the Anti-Money Laundering, Anti-Terrorism Financing, and Proceeds

[559] Prevention of Bribery Ordinance (Chapter 201) (POBO) Hong Kong.
[560] Section 10 of POBO Hong Kong is further discussed below under subtopic 3.4.

of Unlawful Activities Act 2001 (AMLATFPUAA),[561] while Hong Kong enforces the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO).[562]

Although both laws share the common goal of preventing financial crimes, they differ slightly in wording and structure due to the distinct legal traditions and drafting styles of each jurisdiction. For instance, Malaysia's act uses terms like "unlawful activities" and "proceeds of unlawful activities,"[563] whereas Hong Kong's ordinance refers to "specified unlawful activity" and "proceeds of crime."[564] These differences derived from variations in legal drafting conventions and regulatory environments. Despite these distinctions, both laws define key terms related to anti-money laundering and counter-terrorist financing, despite some differences in language and scope. [565]

Universiti Utara Malaysia

Both frameworks align with international standards set by organizations such as the Financial Action Task Force (FATF) to combat financial crimes effectively. While reflecting their unique local needs and legal traditions, they share core principles and

[561] The Anti-Money Laundering, Anti-Terrorism Financing, and Proceeds of Unlawful Activities Act 2001 (Act 613) (AMLATFPUAA) and please refer to Subtopic 6.3.1.1
[562] The Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615) (AMLO) Hong Kong.
[563] The Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615) (AMLO) Hong Kong and please refer to Subtopic 6.3.1.1.
[564] The Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615) (AMLO) Hong Kong.
[565] This paragraph provides a basic summary of the wording in Hong Kong's AML law and Malaysia's AMLA, focusing on whether the two laws share similarities or differences. This analysis serves as a foundation for proposing the new Section 36A, which is intended to be read alongside Section 36 to ensure consistency and effectiveness within Malaysia's legal framework. It is essential to assess the compatibility of other relevant laws, particularly AMLA, with provisions on illicit enrichment before proposing amendments to the existing law. Additionally, the recommendation in Subtopic 6.3.1.1 should be read in conjunction with this paragraph.

objectives, ensuring consistency in tackling money laundering, terrorism financing, and related financial crimes. Nevertheless, the overall goal remains the same: to meet international standards and contribute to global efforts in combating financial crimes.[566]

This underscores the importance of Malaysia considering the adoption of an independent and stand-alone illicit enrichment law, which is crucial for enhancing its framework to effectively address corruption and illicit enrichment issues, as practiced by Hong Kong.

### 3.2.3 Argentina

The crime of illicit enrichment is recognised by a number of Latin American countries, including Argentina, Paraguay, Peru, and Venezuela.[567] Under Article 268(2) in Chapter IX illicit enrichment of officials and employees of the Argentina Penal Code;

> *"Any person who, when so demanded, fails to justify the origin of any appreciable enrichment for himself or a third party in order to hide it, obtained subsequent to assumption of a public office or employment, and for up to two years after having ceased his duties, shall be punished by imprisonment from two to six years, a fine of 50 percent to 100 percent of the value of the enrichment, and absolute perpetual disqualification. Enrichment will be presumed not only when the person's wealth has been increased with money,*

[566] "The Financial Action Task Force," *The Financial Action Task Force*, https://www.fatf-gafi.org/en/the-fatf/what-we-do.html (accessed January 5, 2024).
[567] Guillermo Jorge, *The Romanian Legal Framework on Illicit Enrichment* (Washington, DC., 2007).

*things, or goods, but also when his debts have been cancelled or his obligations extinguished. The person interposed to dissimulate the enrichment shall be punished by the same penalty as the author of the crime."*

*(3) Any person who, by reason of his position, is required by law to present a sworn statement of assets and maliciously fails to do so shall be punished by imprisonment from 15 days to two years and special perpetual disqualification. The offence is deemed committed when, after due notice of the obligation, the person obligated has not complied with those duties within the time limits established by the applicable law. Any person who maliciously falsifies or omits data required in those sworn statements by the applicable laws and regulations shall be liable to the same penalty"*

Universiti Utara Malaysia

Specifically in Argentina, the offence was officially incorporated into Articles 268(2) and 268(3) of the Criminal Code in 1964,[568] and as a result of revising its existing legislation, Argentina became the first country to criminalise illicit enrichment.[569] Argentina defines it as the failure "to justify the origin of any appreciable enrichment for himself or a third party."[570]

Despite the criminalisation of illicit enrichment in 1964, the authorities did not use the offence until 1994, when a constitutional amendment supported the underlying

[568] Andrew Dornbierer, *Illicit Enrichment : A Guide to Laws Targeting Unexplained Wealth* (Basel Institute on Governance, 2021).
[569] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012), 9.
[570] Article 268(2) of the Argentina Criminal Code of 1964.

concept and encouraged prosecutions. From 2000 to 2009, a total of 39 cases involving illicit enrichment were prosecuted, resulting in 29 convictions.[571] The prosecution success rate in cases involving illicit enrichment is significantly higher, as seen by the convictions secured in 14 percent of trials related to corruption. This is primarily due to the ability of prosecutors to identify cases with high probabilities of success in court, and the investigation of suspects of illicit enrichment often reveals a lawful source of their increased wealth.[572]

A politician named Maria J. Alsogaray faced charges of illicit enrichment in Argentina. The appellant argued that the illicit enrichment law was subject to multiple interpretations, which could have implications for the principle concept of legality.[573] However, the Supreme Court of Justices rejected these arguments, affirming that illicit enrichment is an active offence. It involves a significant and unexplained increase in wealth after taking public office. The court ruled that the accused public official is not required to prove innocence. Instead, the prosecutor must provide specific and comprehensive evidence of the unjustified enrichment.[574]

Universiti Utara Malaysia

[571] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012), 9.
[572] Ibid.
[573] Andrew Dornbierer, *Illicit Enrichment : A Guide to Laws Targeting Unexplained Wealth* (Basel Institute on Governance, 2021).
[574] Andrew Dornbierer, *Illicit Enrichment : A Guide to Laws Targeting Unexplained Wealth* (Basel Institute on Governance, 2021). & Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012), 9.

In Argentina, corruption is still a major issue. Argentina has long suffered from widespread and systemic corruption. When comparing the Corruption Perceptions Index[575] between Argentina and Malaysia, Malaysia has a better CPI score than Argentina. Argentina's CPI score has been worsening since 2019. In 2022, Argentina ranked 94th among the 180 countries in the index, with a score of only 38.[576]

Even though Argentina has sufficient and strong legislation and an institutional framework to fight corruption, it has been unable to make any significant improvements and continues to be a significant problem in both the public and private sectors, according to the CPI Index. This is remarkably the result of their insufficient and weak enforcement.[577]

### 3.2.4 Egypt

Egypt has implemented several legislations in its national legal framework to combat corruption, including the Penal Code,[578] the Code of Criminal Procedure,[579] the Illicit Gains Act[580] and the Anti- Money-Laundering Act.[581]

[575] Please refer to Table 1.1 Corruption Perceptions Index 2017-2022, in Chapter 1, Page 4.
[576] "Corruption Perceptions Index," *Transparency International*, 2022, https://www.transparency.org/en/cpi/2022/index/arg
[577] Natalia A. Volosin, "Argentina's Corruption Machine: Toward an Institutional Approach," in *Corruption in Latin America: How Politicians and Corporations Steal from Citizens*, 2018.
[578] Egyptian Penal Code No. 58 Of 1937
[579] Egyptian Criminal Procedure Code No. 150 for 1950
[580] The Egyptian Illicit Gain Act No. 62 of 1975
[581] The Anti-Money Laundering Law No. 80 of 2002 & United Nations, "Review of Implementation of the United Nations Convention against Corruption," in *Conference of the States Parties to the United Nations Convention against Corruption* (St. Petersburg, Russia., 2015).

Egypt is well developed among the countries in the Middle East. Despite having the largest economy in Africa,[582] Egypt continues to suffer from various forms of corruption, such as bribery, embezzlement, and money laundering, among others. According to Transparency International's Corruption Perceptions Index report for 2021, Egypt received a CPI score of 33 out of 100, where 100 indicates a "very clean" rating and 0 indicates a "highly corrupt" score. Egypt was placed 117th out of the 180 countries included in the report,[583] which shows that the corruption issue in Egypt is quite bad.

The offence of illicit enrichment is not legally recognised in many countries, including the United States and certain European countries[584] such as Austria and Finland.[585] Egypt is one of the countries that criminalises illicit enrichment by public officials as a criminal offence.[586] Even though its ranking in the CPI score and the situation of corruption in Egypt are quite bad, their efforts in fighting corruption ought to be complimented.

Universiti Utara Malaysia

[582] "Corruption in Egypt," *Lexology, Law Business Research*, last modified 2020, accessed December 12, 2020, https://www.lexology.com/library/detail.aspx?g=26e2ddc8-95df-49ab-b2f2-e1b0ecde3c78.
[583] Please refer to Table 1.1 Corruption Perceptions Index 2017-2022, in Chapter 1, Page 4, and refer to "Corruption in Egypt," *Lexology, Law Business Research*, last modified 2020, accessed December 12, 2020, https://www.lexology.com/library/detail.aspx?g=26e2ddc8-95df-49ab-b2f2-e1b0ecde3c78.
[584] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).
[585] *Comparative Overview: Criminalisation of Illicit Enrichment of Public Officials in Certain European Countries,* Parliament of Montenegro, Parliamentary Institute Research Centre, (Podgorica, Montenegro, 2016), 4.
[586] Samah Al Agha, "Illicit Enrichment: Is Reconciliation a Prevention of or an Invitation to Corruption? (The Egyptian Example)," *Journal of Financial Crime* 28, no. 4 (2021): 1022–1031, https://www.emerald.com/insight/1359-0790.htm%0AJFC.

In 1975, Egypt enacted a law defining 'any increase in wealth' by a public official as unlawful gain.[587] The Illicit Gains Authority (IGA) was founded in 1975 while Anwar Al-Sadat was president. The organisation evolved from the Ministry of Justice committees established during Jamal Abdul Nasser's reign. The IGA reports to the Ministry of Justice but lacks the jurisdiction to conduct criminal investigations into corruption cases. Al-Sadat enhanced the efficacy of the administrative court system, providing individuals with the opportunity to lodge complaints regarding corruption within the public sector.[588] This was an attempt to combat corruption, as the government has faced challenges with identifying illicit enrichment and effectively prosecuting public officials involved in corrupt activities through undocumented, secret, and unlawful partnerships. Therefore, the only remaining evidence is the apparent increase in wealth among officials, which includes their possession of luxury vehicles, extravagant residences, and lavish vacations.

Universiti Utara Malaysia

The Egyptian IGA Law No.62 of 1975[589] was first enacted in 1975[590] with the purpose of criminalising and penalising public officials who acquire a significant amount of wealth in terms of assets or money without reasonable justification. According to Article 18 of this law, whoever obtains an illicit gain for himself, or

[587] Andrew Dornbierer, *Illicit Enrichment : A Guide to Laws Targeting Unexplained Wealth* (Basel Institute on Governance, 2021).
[588] Samah Al Agha, "Illicit Enrichment: Is Reconciliation a Prevention of or an Invitation to Corruption? (The Egyptian Example)," *Journal of Financial Crime* 28, no. 4 (2021): 1022–1031, https://www.emerald.com/insight/1359-0790.htm%0AJFC.
[589] The Egyptian Illicit Gain Act No. 62 of 1975
[590] Samah Al Agha, "Illicit Enrichment: Is Reconciliation a Prevention of or an Invitation to Corruption? (The Egyptian Example)," *Journal of Financial Crime* 28, no. 4 (2021): 1022–1031, https://www.emerald.com/insight/1359-0790.htm%0AJFC.

another party faces imprisonment, a fine equal to the illicit gain, as well as a decision to return the illicit gain.[591]

The offence of illicit enrichment criminalises the unlawful profits that a public official accumulates upon entering a public position.[592] For instance, if a public official experiences an unexplained increase in their wealth disproportionate to their legal salary, they may face charges under the illicit enrichment law.[593]

The illicit enrichment offence is defined under IGA Law No.62 of 1975 and Article 20 of the United Nations Convention against Corruption (UNCAC) as having five essential components: (1) A public official who. (2) During the term of services. (3) Experiences a significant increase in assets. (4) Knowingly. (5) Without justification.[594] These elements of illicit enrichment by Egyptian law[595] are also mentioned and agreed upon by the respondent and scholars of this research,[596] which is discussed further in Chapter 4 of the research.

Universiti Utara Malaysia

[591] Natural Resource Governance Institute, "*Egypt Law No.62, 1975 on Illegal Gains*," accessed October 10, 2023. https://www.resourcedata.org/dataset/rgi-law-62-1975-illegal-gains.
[592] Please refer the Egyptian Illicit Gain Act No. 62 1975.
[593] Samah Al Agha, "Illicit Enrichment: Is Reconciliation a Prevention of or an Invitation to Corruption? (The Egyptian Example)," *Journal of Financial Crime* 28, no. 4 (2021): 1022–1031, https://www.emerald.com/insight/1359-0790.htm%0AJFC.
[594] Please refer to the Egyptian Illicit Gain Act No. 62 1975.
[595] M. Mada, "Safwat-Al-Sherif Sons Sentenced to 5-10 Years in Prison for Illicit Gains," last modified 2016, https://madamasr.com/en/2016/05/29/news/u/safwat-al-sherif-sons-sentenced-to-5-10-years-in- prison-for-illicit-gains/ (accessed 10 May 2022).
[596] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012). & Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020. & Samah Al Agha, "Illicit Enrichment: Is Reconciliation a Prevention of or an Invitation to Corruption? (The Egyptian Example)," *Journal of Financial Crime* 28, no. 4 (2021): 1022–1031, https://www.emerald.com/insight/1359-0790.htm%0AJFC.

In conclusion, Egypt has ratified international treaties, established anti-corruption institutions, and had sufficient anti-corruption laws. Despite these measures, corruption remains a significant concern in Egypt. With a score of just 30, Egypt ranked 130th out of 180 countries in the CPI index and had a lower score in CPI 2022.[597] Malaysia has a better CPI score compared to Egypt.[598] The corruption laws in Egypt are poorly enforced, just like Argentina.

Besides, a pervasive culture of corruption and an ineffective legal system make the situation of corruption in Egypt even worse than in Argentina. The accountability of the government and Parliament is generally weak, although there are regulations to govern conflicts of interest and the disclosure of assets relating to government officials and the head of state, these have proven to be largely ineffective.[599] Corruption continues to be widespread in Egypt.

Universiti Utara Malaysia

### 3.2.5 Conclusion

The unexplained sources of wealth or living beyond means are a symptom or indicator of corruption crime.[600] Therefore, all countries must introduce illicit enrichment as a criminal offence in their legislation with the purpose of

[597] "Corruption Perceptions Index," *Transparency International*, 2022, https://www.transparency.org/en/cpi/2022/index/arg
[598] Please refer to Table 1.1 Corruption Perceptions Index 2017-2022, in Chapter 1, Page 4.
[599] Andrew Puddephatt, "Corruption in Egypt," *Global partners and Associates* 28 (2012).
[600] Sutinah Sutan, *A Sustainable Initiative towards Achieving Zero Tolerance to Corruption* (Kuala Lumpur, 2019), https://abm.org.my/archives/past-events-continual-learning/item/271-corporate-liability-provision-what-it-is-and-how-will-my-company-be-affected.

strengthening capacities in the fight against corruption. However, the criminalisation of illicit enrichment is not recognised by certain countries globally as an anti-corruption plan, and it remains to cause further discussion and debate.[601]

From the regulatory legal frameworks for illicit enrichment worldwide that was discussed above, international experience shows that a good legal framework, the government and anti-corruption agencies have a significant role to combat corruption and illicit enrichment in a country, including international treaties, because corruption and IE is now a world-wide issue, and the difficulty of the offences has increased with economic development. So, the criminalisation of a good legal framework that is compatible with a country's economic, social, and political situation is important as a tool in the effort to prevent IE.

Universiti Utara Malaysia

Based on the above discussion of global illicit enrichment law, in order to demonstrate which countries are better than Malaysia and which are lower than Malaysia in terms of the Corruption Perceptions Index (CPI), the researcher focused on Singapore, Hong Kong, Argentina, and Egypt.[602] The researcher has selected four countries: two countries with the highest score in CPI (Singapore and Hong Kong) and two countries with the lowest score in CPI (Argentina and Egypt).

[601] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).
[602] Transparency international has listed 180 countries under CPI 2022.

Two Asian countries with excellent CPI scores[603] are Singapore and Hong Kong, and Hong Kong have adopted the provision of illicit enrichment in its provision, which happens to be the best at addressing global corruption. Meanwhile, Argentina and Egypt, two countries with low CPI scores, have included specific provisions on illicit enrichment in their legal frameworks. Even though their legislation includes a specific IE law, their CPI index has not improved. In fact, Egypt's CPI score in 2022 was the lowest it has ever been. This is due to the fact that, despite having legislation specifically designed to combat corruption and IE, Egypt and Argentina fail to enforce it. The most crucial thing in fighting corruption and illicit enrichment is effective law enforcement. Singapore and Hong Kong[604] have a higher CPI score than Malaysia because they uphold the law. To effectively combat corruption, it is crucial to enforce laws against major targets, remove obstacles, and show the public a strong commitment to fighting corruption. This will also highlight the efficiency of anti-corruption agencies.[605]

The common law legal system that has been adopted in Malaysia is also used in Hong Kong and Singapore. In contrast, the legal systems of Argentina and Egypt follow the principles of civil law. Remarkably, Hong Kong's legal framework was chosen and further examined by the researcher to identify the legal gaps in Malaysia and to recommend the development of a comprehensive legal framework to combat

[603] Please refer to Table 1.1 Corruption Perceptions Index 2017-2022, in Chapter 1, Page 4.
[604] Example of IE cases that shows the effectiveness of IE law in Hong Kong are further illustrated below, in subtopic 3.4.
[605] Tony Kwok Man-Wai, "Effective Measures to Combat Corruption in Hong Kong," *19th UNAFEI UNCAC Training Programme Visiting Experts' Papers Resource Material Series No.101* (2017).

corruption and criminalise IE in Malaysia as a source of reference for this study. However, the new law must be subjected to the Malaysian constitution and the fundamental foundations of its legal system, which are further discussed in subtopic 3.4 below.

## 3.3 International Legal Framework on Asset Declaration

### 3.3.1 Introduction

There are many tools, programs, and laws that have been invented to curb corruption in the public sector, such as the Income and Asset Declaration (IAD) system, which became one of the important measures to establish and maintain good governance.[606] Requiring public officials disclose their financial information might reduce corruption in several ways. Disclosure enables a public employee's wealth to be monitored. If periodic disclosures show an unusual increase in assets or extravagant expenditures, the employee can be asked for an explanation.[607]

The information that should be disclosed under a comprehensive law includes income from all sources, assets, liabilities, positions in for-profit or non-profit firms, debts owed, gifts received, and any reimbursement for travel or other expenditures

[606] Ruxandra Burdescu et al., *Income and Asset Disclosure Systems : Establishing Good Governance through Accountability* (Washington, D.C., 2010).
[607] Richard Messick, "The United Nation Convention Against Corruption and Income and Asset Declaration," *NACC Journal* (2010): 101–112.

from non-official sources, as well as interests. Disclosure of these items provides a complete picture of an individual's personal finances.[608]

### 3.3.2 The Importance of Having IAD System & Law

The importance of the IAD system in fighting corruption is increasing day by day through monitoring the development and changes of the public officials' wealth. The advantages of IAD depend on a strong foundation, such as a legal framework, and well equipped and funded competent institutions in order to prevent corruption. [609]

The main purpose of the IAD system is to prevent corruption by increasing the sense of responsibility and accountability to the public officials, where they are required to disclose their assets and benefits periodically, subject to sanctions in case they abstain from complying with.[610]

More importantly, when the IAD is used to prevent conflict of interests, if the officials are required to divulge their interests and benefits, they will be aware of involving suspicious situations where his position may conflict with his interest.[611] Consequently, this will enhance integrity and transparency among the relevant

[608] Richard Messick, "The United Nation Convention Against Corruption and Income and Asset Declaration," *NACC Journal* (2010): 101–112.
[609] Mohannad Ahmad Abu-Morad, Dr Fauziah Mohd Noor, and Dr Zainal Amin Ayub, 'The Shortcomings of the Income and Asset Declaration System in Jordan Illicit Enrichment Law', *Journal of Global Business and Social Entrepreneurship (GBSE)* 2, no. 1 (2016): 98–110.
[610] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).
[611] The OECD Anti-Bribery Convention, *Managing Conflict of Interest in the Public Service.* (Paris, 2004).

sectors. Thereby, it maintained the confidence of citizens in the three branches of the state.[612]

In order to identify possible conflicts of interest or track possible illicit enrichment, declarations should be filled out on a regular basis, ideally annually or every two years, and the submissions are made twice: upon entering government and upon leaving office.[613]

Another purpose of the IAD system is, as a part of law enforcement tools. Due to the secret nature of corruption, the IAD assists the investigation and prosecution in corruption offences as a source of information, which will make it easier to reveal the covert information or data related to the public official, where the IAD provides an effective criminalisation on illicit enrichment and stolen asset recovery,[614] money laundering, even the statement of the written disclosure can be used against the defendant himself as a proof in what is called shifting the burden of proof.[615]

Accordingly, the absence of evidence to explain the changes in the public official's wealth is difficult to capture through traditional investigation and prosecution,[616] that is why the IAD system considered an additional source of information to the

[612] Ruxandra Burdescu et al., *Income and Asset Disclosure Systems : Establishing Good Governance through Accountability* (Washington, D.C., 2010).
[613] Ibid.
[614] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).
[615] Ruxandra Burdescu et al., *Income and Asset Disclosure Systems : Establishing Good Governance through Accountability* (Washington, D.C., 2010).
[616] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).

investigation. In this manner, it helps to understand the trend of the investigation. This is considered one of the best practices in combating corruption.[617]

Sanctions provided by the IAD laws deem strong indicators to ensure integrity and commitment of the system, where it seeks to enforce the law[618] and punish who refrains from submitting the declaration in due time, providing false information, or hiding it with different penalties, such as imprisonment, fines, and even being dismissed from the job.[619]

The advantage and success of the IAD system depend on the political, institutional, and cultural environment. Therefore, the IAD system has twofold functions: preventive and executive, or law enforcement. In the preventive function, the IAD system seeks to prevent the conflict of interests and ensure the sound implementation of a code of ethics.[620] Besides, the law enforcement role of the IAD is looking to detect and prosecute the incidences of illicit enrichment.[621]

Asset declaration regimes should take into account the risk of corrupt officials using the names of their relatives, spouses, and other individuals to hide their assets.

Universiti Utara Malaysia

[617] Maud Perdriel, *The Accumulation of Unexplained Wealth by Public Officials : Making the Offence of Illicit Enrichment Enforceable.*, 2012.
[618] The World Bank, *Income and Asset Disclosure: Case Study Illustrations* (Washington, D.C., 2013).
[619] Mohannad Ahmad Abu-Morad, Dr Fauziah Mohd Noor, and Dr Zainal Amin Ayub, 'The Shortcomings of the Income and Asset Declaration System in Jordan Illicit Enrichment Law', *Journal of Global Business and Social Entrepreneurship (GBSE)* 2, no. 1 (2016): 98–110.
[620] Regional Anti-corruption Initiative (RAI), *Rules and Experiences on Integrity Issues* (Sarajevo, 2012), www.rai-see.org.
[621] Mohannad Ahmad Abu-Morad, Dr Fauziah Mohd Noor, and Dr Zainal Amin Ayub, 'The Shortcomings of the Income and Asset Declaration System in Jordan Illicit Enrichment Law', *Journal of Global Business and Social Entrepreneurship (GBSE)* 2, no. 1 (2016): 98–110.

Therefore, public officials should also be required to disclose information about the assets of their spouses, children, and other household members.[622]

While the asset declaration system establishes a crucial framework for promoting transparency and accountability, the enactment of a comprehensive asset declaration law ensures its effective implementation and law enforcement. When suspicions about an individual are raised, investigators can review the person's income and asset disclosure statement. Is it consistent with bank account records, and what can one observe about the person's lifestyle? Or is there a significant discrepancy between what the disclosure reveals and the way the person is living? Prosecuting and convicting corrupt officials is also easier when there is a financial disclosure law. Almost all such laws make it a crime to file a false declaration. By doing so, the law creates a new, easily provable offence directly associated with corrupt conduct.[623]

Financial disclosure cannot stop those determined to accept bribes, award themselves public contracts, or otherwise misappropriating public funds. The less determined, those tempted to steal from the public but afraid of being caught, can be deterred. It can also remind honest employees and managers to take a pass on decisions that could affect their interests. Finally, it can bolster confidence in government by

[622] OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption.*, 2011, http://dx.doi.org/10.1787/9789264095281-en.
[623] Richard Messick, "The United Nation Convention Against Corruption and Income and Asset Declaration," *NACC Journal* (2010): 101–112.

reassuring citizens that conflicts of interest are being investigated and public employees' finances scrutinised.[624]

Disclosure can be either confidential or public. Confidential disclosures are made to an anti-corruption agency, supreme audit bureau, or other government entity. A public disclosure law requires that the receiving agency publish the disclosure form, in the media or on the Internet, or otherwise allow the public to see it.[625] When the aim of the disclosure regime is to monitor changes in employees' wealth, the law must require that the actual value of each asset and gift received and the amount of any income earned from outside activities be provided as well.[626]

### 3.3.3 International Provisions of IAD

International documents provide the provisions of IAD, the United Nations Convention Against Corruption (UNCAC) 2004 stipulates the financial disclosure system in article (52/5):

> "*Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non- compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent*

[624] Richard Messick, "The United Nation Convention Against Corruption and Income and Asset Declaration," *NACC Journal* (2010): 101–112.
[625] Ibid.
[626] Mohannad Ahmad Abu-Morad, Dr Fauziah Mohd Noor, and Dr Zainal Amin Ayub, 'The Shortcomings of the Income and Asset Declaration System in Jordan Illicit Enrichment Law', *Journal of Global Business and Social Entrepreneurship (GBSE)* 2, no. 1 (2016): 98–110.

*authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention*."

Article 8 of the United Nations Convention against Corruption (UNCAC) requires States Parties to consider establishing policies requiring officials to reveal "*to appropriate authorities . . . their outside activities, employment, investments, assets and substantial gifts or benefits*."

The Inter-American Convention against Corruption 1996 (IACAC) provides the IAD system under Article (3) in relationship with the preventive measures, which calls state parties to establish such a system to force any person who performs a public function to disclose his/her income, assets, and liabilities.[627]

Likely, the African Union Convention on Preventing and Combating Corruption 2003 (AUCPCC), Article 7, requires the state parties to commit themselves to building asset declarations for public officials to fight corruption and related offences in the public service.[628]

The IAD system in Argentina is based on Public Ethics Law No. 25.188 and Decree No. 164/99 (Regulation of the Public Ethics Law). These laws, when they were passed, envisioned a bold and thorough way to keep an eye on the income and asset declarations of government officials from all three branches, all under the control of a single oversight body. The effectiveness of the system was enhanced by, firstly, a

[627] Richard Messick, "The United Nation Convention Against Corruption and Income and Asset Declaration," *NACC Journal* (2010): 101–112.
[628] African Union, *African Union Convention on Preventing and Combating Corruption* (Maputo, 2003).

combined model designed for the detection and prosecution of illicit enrichment and the prevention of conflicts of interest, secondly, separate bodies for the receipt and review of declarations and for investigations, a centrally managed oversight system with decentralised functions, electronic submission and verification processes and lastly, severe criminal penalties for non-submission and for false declarations.[629]

Argentine law provides for strong sanctions for violations of asset disclosure obligations. Article 10 of Decree 164/99 explicitly provides for the suspension of pay during the period of non-compliance as a sanction for non-submission of the asset declaration. Furthermore, Article 268(3) of the Penal Code stipulates a prison sentence ranging from fifteen days to two years for wilfully neglecting to submit a declaration or intentionally omitting or falsifying information within it. In addition, officials found guilty under this statute may be permanently disqualified from public service. A proportionate increase in the enforcement of sanctions for violations of the IAD requirement has resulted in the effectiveness of the IAD law in Argentina. Argentina's IAD system is, therefore, a good example of a system that is functionally optimal in many respects but may not necessarily be delivering on its promise of serving as a credible deterrent and anticorruption enforcement mechanism.[630]

Hong Kong was the first jurisdiction to use financial disclosure to monitor employee wealth. The IAD system in Hong Kong SAR, China, was created in 2004, but builds on a strong anticorruption framework that was first implemented in the 1970s with

[629] Alexandra Habershon and Tammar Berger, 'Chapter 1 : Argentina', in *Income and Asset Disclosure : Case Study Illustrations* (The World Bank, 2013).
[630] Ibid.

the creation of the Independent Commission against Corruption (ICAC). The IAD system is overseen by the Civil Service Bureau (CSB) and implemented by individual agencies within the government. Focused on conflicts of interest, the IAD system in Hong Kong SAR, China, created three tiers of public officials who must declare their income and assets to varying degrees, depending on their seniority or the sensitivity of their position. Besides, the system required different levels of disclosure for different categories of officials.[631]

Individual government agencies have designated ethics officials who are responsible for receiving IAD declarations and reviewing them for completeness and conflicts of interest. Each agency is responsible for imposing administrative sanctions for non-compliance with either the requirement to disclose assets or the failure to take appropriate, prescribed action to mitigate a conflict of interest. The ICAC is in charge of conducting investigations and pursuing criminal penalties for either failing to file or having a conflict of interest. The declarations of individual government employees are publicly available at the CSB's headquarters. If a conflict of interest is revealed during the analysis of the declaration, depending on the nature of the conflict, the ethics official will recommend the appropriate action to be taken. This can range from divestiture to loss of position or even to referral to the ICAC if the conflict appears to rise to the level of a criminal offence.[632]

[631] Richard Messick, "The United Nation Convention Against Corruption and Income and Asset Declaration," *NACC Journal* (2010): 101–112.
[632] Ibid.

Although public employees may occasionally reveal information pointing to illegal activity, rarely do those embezzling public funds, accepting bribes, or otherwise enriching themselves through corrupt activities disclose that their assets are increasing as a result. When the law requires that the value of assets be divulged, understating the value of land, buildings, shares, or other assets that the employee owns must be made a crime. As noted above, falsifying a disclosure is a much easier crime to prove than the underlying corruption, particularly when bribery is involved. Bribes are rarely witnessed, and even if there are, a causal link between the bribe and an official action must be shown. By contrast, showing that an employee failed to accurately report the value of his or her assets is a straightforward matter.[633]

### 3.3.4 Conclusion

In the countries of interest, legal provisions governing asset declarations are typically extensive, requiring a broad spectrum of public officials to declare their assets. However, given the challenges of verifying these declarations effectively, a more targeted approach focusing on officials in high-risk areas (e.g., politicians, heads of state, and procurement officials) may enhance the law's enforcement.[634]

The Income and Asset Declaration (IAD) system aims to promote ethical conduct by addressing conflicts of interest and preventing illicit enrichment among public

[633] Richard Messick, "The United Nation Convention Against Corruption and Income and Asset Declaration," *NACC Journal* (2010): 101–112.
[634] Maira Martini, *Asset Declaration Regimes in Selected Asian Countries*, 2013.

officials. According to international IAD guidelines, regular asset declarations help prevent the accumulation of illicit wealth. Public servants are required to file periodic statements disclosing their assets, enabling the detection of unexplained wealth or non-compliance, which may suggest concealed income. Through frequent IADs, authorities can monitor new acquisitions, and significant increases in assets without explanation may constitute "illicit enrichment." Non-compliance can lead to enforcement actions under asset declaration laws.

3.4 Research Question 3: Which illicit enrichment regulatory legal frameworks from other countries should Malaysia use as a reference?

Due to the argumentative aspects of illicit enrichment, this section discussed the analysis of Research Question 3 and Research Objective 3, which explain the relevant issues involved in criminalising illicit enrichment in Malaysia with some references to international legislation and practices as discussed above in this chapter, such as POBO in Hong Kong. This subtopic of Research Question 3 also suggests implementing a specific IE law with reference to the IE law in Hong Kong.

Based on the analysis and literature review of this thesis, the researcher, acting in accordance with her best discretion and judgement, had identified and examined the suitable regulatory legal framework for illicit enrichment from other countries that should be used as a reference for Malaysia, which is Hong Kong.[635] Thus, the

[635] Please refer to Chapter 3, subtopic 3.2.2 for a comprehensive explanation of the Hong Kong law of IE.

findings for Research Question No. 3 and Research Objective No. 3 are automatically established. Section 36 of the MACCA needs to be amended and revised by including a provision on illicit enrichment. Therefore, for this research analysis, the legal framework of Hong Kong is used as a source of reference.

The reason for choosing Hong Kong is that its anti-corruption legal frameworks have already criminalised illicit enrichment. Furthermore, Hong Kong ranks among the countries with the most effective anti-corruption measures[636] and is one of the Asian countries that scored among the best in the CPI 2021 and CPI 2022 rankings.[637] Hong Kong demonstrated a successful fight against corruption just five years after the establishment of the Independent Commission Against Corruption. Hong Kong eradicated all overt and syndicated corruption within five years, establishing itself as one of the world's most corruption-free societies and one of the few successful models of transforming from a highly corrupt place to a clean one.[638]

Despite isolated cases of investigating or prosecuting public officers for corruption offences, the civil service in Hong Kong remained clean and honest. According to the ICAC Annual Report in 2022,[639] no public servant has ever been prosecuted for

[636] Please refer to page 4 of this thesis. Transparency International's Corruption Perceptions Index for 2022 ranked Singapore and Hong Kong 5th and 12th, respectively, on an index of 180 countries and territories
[637] Please refer to Table 1.1 Corruption Perceptions Index 2017-2022, in Chapter 1, Page 4.
[638] Tony Kwok Man-Wai, 'Effective Measures to Combat Corruption in Hong Kong,' *19th UNAFEI UNCAC Training Programme Visiting Experts' Papers Resource Material Series No.101* (2017).
[639] Independent Commission Against Corruption, *2022 Annual Report: Independent Commission Against Corruption Hong Kong Special Administrative Region of the People's Republic of China*, 2022, https://www.icac.org.hk/icac/annual-report/2022/.

possession of unexplained wealth under Section 10 of POBO. This indicates that Hong Kong is successful in preventing public officers from possessing unexplained wealth. The lack of prosecuted cases demonstrates the effectiveness of the legislation, and other corrupt countries should learn from and implement Hong Kong's government's commitment in the battle against corruption. It shows that corruption can be successfully controlled, regardless of its seriousness and prevalence.[640] Furthermore, it has also been agreed by six respondents[641] that the law of IE in Hong Kong is one of the best that Malaysia may employ and refer to as a source of reference.

Therefore, the principal findings for Research Question 3 and Research Objective No. 3 have been answered. This section discusses one important aspect: Table 3.4.1 demonstrates the complete description of the offence and punishment provisions of Section 36 of the MACCA and Section 10 of POBO Hong Kong; Table 3.4.2 discusses a summary of the comparative analysis between these two sections; and below the summary is the discussion and analysis of these sections, including further discussion on the sections' similarities and differences, their implications and applications, and the factors for a successful and effective prosecution of Section 10.

Universiti Utara Malaysia

[640] Tony Kwok Man-Wai, 'Effective Measures to Combat Corruption in Hong Kong,' *19th UNAFEI UNCAC Training Programme Visiting Experts' Papers Resource Material Series No.101* (2017).

[641] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019. Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020. Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020. Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020. & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

The illicit enrichment provision in Hong Kong is found in Section 10 of the Prevention of Bribery Ordinance (Chapter 201) (POBO), whereas in Malaysia, it is contained in Section 36 of the MACCA, read as follows:

Table 3.4.1 : The Description of Offence and Punishment of Section 36 of the Malaysian Anti-Corruption Commission Act 2009 and Section 10 of the Prevention of Bribery Ordinance (Chapter 201) (POBO) Hong Kong.

| Legislation | Description of Offence & Punishment |
|---|---|
| Section 36 of the Malaysian Anti-Corruption Commission Act 2009 | **36. Powers to obtain information**<br><br>"Section 36 (1) - If an officer of the Commission of the rank of Commissioner and above has reasonable ground to believe, based on the investigation carried out by an officer of the Commission, that any property is held or acquired by any person as a result of orin connection with an offence under this Act, may by written notice."<br><br>"Section 36 (1) (a) i, ii, iii, iv, v, vi, require that person to furnish a statement in writing on oath or affirmation to identify every property, whether movable or immovable, whether within or outside Malaysia, belonging to him or in his possession, and how the properties was acquired, setting out all other information relating to each of the properties and setting out all his sources of income, earnings or assets."<br><br>"Section 36 (1) (b) i, ii, iii, iv, v, vi<br>require any relative or associate of the person to furnish a statement in writing on oath or affirmation to identify every property, whether movable or immovable, whether within or outside Malaysia, belonging to him or in his possession, and how the properties was acquired, setting out all other information relating to each of the properties and setting out all his sources of income, earnings, or assets." |

Universiti Utara Malaysia

| | |
|---|---|
| | "Section 36 (1) (c) - require any officer of any bank or financial institution, or any person who is in any manner or to any extent responsible for the management and control of the affairs of any bank or any financial institution, to furnish copies of any or all accounts, documents and records relating to any person to whom a notice may be issued under paragraph a and b."<br><br>"Section 36 (2) – Any person who wilfully neglects or fails to comply with the terms of the notice, commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years and to a fine not exceeding one hundred thousand ringgits."<br><br>"Section 36 (3) & (4) – officer who has reasonable ground to believe the that the public officer who has been served with written notice, possess or holds excessive assets or wealth, having regard to his present or past emoluments and all other relevant circumstances, such officer of the Commission may by written direction require him to furnish a statement on oath or affirmation explaining how he was able to own, possess such property, and Failure to explain satisfactorily such excess of the assets, property owned, possessed, controlled, or held in interest, commits an offence and shall on conviction be liable to Punishment –<br>a) imprisonment for a term not exceeding twenty years; and<br>b) a fine which is not less than five times the value of the excess, if the excess is capable of being valued, or ten thousand ringgits, whichever is the higher."<br><br>"Section 36 (4) – every person who neglects or fails to comply with such direction, he commits an offence and shall onconviction be liable to<br>a) imprisonment for a term not exceeding twenty years; and<br>b) a fine which is not less than five times the value of the excess, if the excess is capable of being valued, or ten thousand ringgits, whichever is the higher."<br><br>"Section 36 (5) - Every person to whom a notice or |

Universiti Utara Malaysia

| | |
|---|---|
| | direction is sent by an officer shall be legally bound to state the truth and shall disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him."<br><br>"Section 36 (6) - Where any person discloses an information or produces any accounts, documents or records, in response to a notice under subsection (1), such person, shall not be liable to prosecution for any offence under or by virtue of any law, or to any proceeding or claim by any person under or by virtue of any law." |
| Prevention of Bribery Ordinance Hong Kong (Chapter 201) (POBO) | **Section 10- Possession of Unexplained Property**<br><br>"Any person who, being or having been the Chief Executive[642] or a prescribed officer,"[643]<br><br>"(a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or"<br><br>"(b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,"<br><br>"shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence."<br><br>"Section 10 (1A) & (1B)<br>The court in determining whether the accused has given a satisfactory explanation as provided in that subsection, shall take into account assets that he declared, and The Chief Justice shall disclose to a court information about accused's assets declaration."<br><br>"Section 10 (2) Where a court is satisfied in proceedings for an offence under subsection (1)(b) that, having regard |

[642] According to Section 2 (3) of POBO Hong Kong, the Chief Executive includes any council, board, committee or other body of any educational institution specified in the notice.
[643] According to Section 2 (1) of POBO Hong Kong, prescribed officer means any person holding an office of emolument, whether permanent or temporary, under the Government.

| | |
|---|---|
| | to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused."<br><br>Section 10 (3) & (4) were repealed.<br><br>"Section 10 (5)<br>Official emoluments include a pension or gratuity payable under the Pensions Ordinance."<br><br>The penalties under Section 10 are summarized as follows:<br><br>"Section 12 : Penalty for offences<br>Any person guilty of an offence under this Part, shall be liable :<br>(a) on conviction on indictment<br>(i) for an offence under section 10, to a fine of $1,000,000 and to imprisonment for 10 years<br><br>(b) on summary conviction<br>(i) for an offence under section 10, to a fine of $500,000 and to imprisonment for 3 years<br><br>and shall be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify."<br><br>"(3) In addition to any penalty imposed under subsection (1), the court may order a person convicted of an offence under section 10(1)(b) to pay to the Government<br>(a) a sum not exceeding the amount of the pecuniary resources; or<br>(b) a sum not exceeding the value of the property, the acquisition of which by him was not explained to the satisfaction of the court." |

Universiti Utara Malaysia

| | |
|---|---|
| | Another addition to the penalty imposed,<br>"Section 12AA : Confiscation of assets provides that<br><br>where a person is convicted on indictment of an offence under section 10(1)(b) the court may, in addition to any penalty imposed under section 12(1), order the confiscation of any pecuniary resources or property-<br>(a) found at the trial to be in his control as provided in section 10; and<br>(b) of an amount or value not exceeding the amount or value of pecuniary resources or property the acquisition of which was not explained by the convicted person to the satisfaction of the court." |

This research conducted a comparative analysis of Hong Kong's legal systems to provide helpful insights and potential solutions for the highlighted issues. As a result, the comparison between Section 36 of the MACCA and Section 10 of POBO HK shows several differences and similarities. The table below compares Malaysia and Hong Kong and summarises both provisions.

Universiti Utara Malaysia

Table 3.4.2 The summary of the comparative analysis between Section 36 of the MACCA and Section 10 of POBO HK.

| SECTION 10 OF POBO HONG KONG | SECTION 36 OF THE MACCA |
|---|---|
| A straightforward provision<br><br>- Section 10 is a straightforward provision that states that if a person commits an offence, he will be prosecuted and charged in court right away if he is found to have excessive property. | A complex provision<br><br>- Meanwhile, Section 36 requires a complicated procedure for issuing a notice to prosecute the offender. |

| | |
|---|---|
| A clear definition of illicit enrichment<br><br>- Hong Kong has a specific provision on IE, and Section 10 of POBO uses the term 'possession of unexplained property,' which carries the same meaning as illicit enrichment. | No definition of illicit enrichment<br><br>- Section 36 only discusses the powers of the commissioner or officer of MACC to obtain information by serving a notice on a person who has excessive wealth or assets; it does not mention any terms related to illicit enrichment or possession of unexplained property. |
| The term official emolument is meant for public servants.<br><br>- The term "present or past official emoluments"[644] is defined as a pension or gratuity payable under the Pensions Ordinance under their Act. | No term official emolument in the provision.<br><br>- Section 36 (3) only mentioned "present or past emolument,"[645] which means source of income, earnings, and assets, and nothing concerning official emolument. |
| Penalties and offences<br><br>- The penalties under Section 10 are more severe and include fines and imprisonment.<br><br>- To pay the amount or value of any benefit he received to the appropriate person or public body and in the way the court directs.<br><br>- To pay to the government a sum not exceeding the amount of the pecuniary resources or a sum not exceeding the value of the property.<br><br>- Confiscation of assets | - The penalties and offences are ultimately similar between these two sections; however, Section 36 provides a lenient penalty compared to Section 10.<br><br>- Only fines and imprisonment are included in Section 36's list of penalties. |

[644] Section 10(5) of the Prevention of Bribery Ordinance (Chapter 201) (POBO) Hong Kong
[645] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.

| | |
|---|---|
| Burden of proof<br><br>- Section 10 creates a statutory presumption of unexplained wealth, placing the burden of proof on the accused public officer to provide a "satisfactory explanation" of his standard of living or how he acquired his pecuniary resources or property.<br><br>- Section 10 of the POBO HK has an even simpler procedure and process than Section 36. If someone's property exceeds his income, the burden is on him to prove his source of wealth. | - The burden of proof under Section 36 of the MACCA is always on the prosecution to prove an offence and show that there is excessiveness, considering all the facts such as monthly income, etc. |
| Similarities:<br><br>In terms of the process of gathering evidence.<br><br>- To counter any potential defence under Section 10, the prosecutor must compile a variety of evidence, including financial support from family members and documentation of their financial situation, winnings from gambling or illegal off-course betting, and money obtained from illegal sources other than corruption. | - Sections 36 (1) (b) and 36 (3) implemented the same procedures. Officers of the Commission have the power to obtain information in the course of an investigation for an offence under the Act about property that they reasonably have grounds to believe has been acquired through the proceeds of bribery. This information may be obtained from the suspect himself, his relatives or associates, or any other person whom the officer has reasonable grounds to believe can assist in the investigations. |
| Similarity in the scope of the section.<br><br>- Section 10 is similar to Section | - Before its current amendment, |

Universiti Utara Malaysia

| | | |
|---|---|---|
| | 36, where it is applicable to any person, including public servants and private individuals, as it mentions 'any person who, being or having been the Chief Executive or a prescribed officer.'[646] | Section 36 only applied to public officers. However, the amendment now includes 'everyone,' encompassing both public and private individuals. |

In the early 1950s, Hong Kong implemented a policy that specified penalties for public officials who were unable to provide evidence for their ownership of assets or their ability to sustain a lifestyle that exceeded their official incomes. This law served as the predecessor of Hong Kong's current illicit enrichment legislation, which was implemented in 1971.[647] As presented in the table, there is a slight difference between Section 36 of the MACCA and Section 10 of the POBO Hong Kong. The differences between these two provisions are discussed to highlight the shortcomings of Section 36 of the MACCA. This will provide readers with a clearer understanding of why the researcher chose Section 10 of the POBO Hong Kong as a source of reference for amending Section 36. The differences are discussed as follows:

Section 10 of POBO Hong Kong is a straightforward provision compared to Section 36 of the MACCA. A person commits an offence and will be prosecuted and charged in court if they are found to have excessive property or to have been living beyond their means without giving a satisfactory explanation to the courts. Therefore, it is

[646] For a comprehensive explanation on Section 10 of POBO Hong Kong, please refer to page 210 of this thesis.
[647] Andrew Dornbierer, *Illicit Enrichment : A Guide to Laws Targeting Unexplained Wealth* (Basel Institute on Governance, 2021).

sufficient to only look at the fact that he has excessive income and property, and he will be charged straight away in court.[648]

Meanwhile, under Section 36, if a person has excessive wealth, the MACC officer, based on his reasonable ground to believe such a case exists, will issue notice beforehand to ask the person to explain, and on the basis of those reasonable grounds, will prosecute the person in court. Considering the discussion in subtopics 4.1.4 and 4.1.9, the procedure in Section 36 is a bit difficult and complicated because it must be supported by an officer's reasonable ground to believe based on an investigation and must be proven from a predicate offence under MACCA first before the officer can serve the notice. The MACC cannot charge the person if the offence cannot be proven. Besides, it is also an offence if the person fails to explain such assets, however, the offence can be charged only if it fulfils the offence under the predicate offence of the said Act first. Besides, the acquisition of excessive wealth under Section 36 among public officers must be proven illicitly, and the acquisition of wealth must come from corrupt offences. MACC cannot simply initiate an investigation by claiming someone has excessive wealth compared to Hong Kong.

Another difference between Section 10 and Section 36 is the definition of illicit enrichment. Hong Kong has a specific provision on IE, and Section 10 of POBO HK

[648] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.



Universiti Utara Malaysia

uses the term 'possession of unexplained property,' which has the same meaning as illicit enrichment. However, as mentioned under Findings 4.1.2, Section 36 only discusses the powers of the commissioner or officer of MACC to obtain information by serving a notice on a person who has excessive wealth or assets, without mentioning any terms related to illicit enrichment or possession of unexplained property.

The term official emolument is another term that is different and included in the provision. Section 10 (5) of POBO Hong Kong defines the term "present or past official emoluments"[649] as a pension or gratuity payable under the Pensions Ordinance under their Act. In contrast to Section 36 (3), it only mentioned "present or past emolument,"[650] which means source of income, earnings, and assets, and nothing concerning official emolument that was addressed under Section 10. Therefore, since the wording under Section 36 states only "present or past emolument," it does not cater to official emolument, unlike Hong Kong. In Hong Kong, they use standard of living control, unless he can show how he manages to maintain such a high level of living, and how the property came into his possession.

Furthermore, there is a slight difference between the penalties and offences under Section 10 of POBO HK and Section 36 of the MACCA. The only available offences

[649] Section 10(5) of the Prevention of Bribery Ordinance (Chapter 201) (POBO) Hong Kong
[650] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.

and penalties under Section 36 are that a person who does not comply with the notice to explain his wealth and assets commits an offence. Besides, only fines and imprisonment are included in Section 36's list of penalties. In contrast, Section 10 imposes more severe penalties, which include not only fines and imprisonment but also a mandatory payment to the government. This payment must not exceed the value of the acquired property or the defendant's monetary resources. Additionally, the government may seize or confiscate any assets found during the trial, with the total amount not exceeding the court's satisfaction.

Since the wealth and assets that they had were a form of abuse of their power as public officers while performing their duties, fines and imprisonment are insufficient to penalise those who engage in illicit enrichment. Instead, they should uphold the confidence that has been placed in them with honesty and integrity. Therefore, since the wealth was acquired through corrupt and illegal means, all of the illegal wealth and property that was 'stolen' by them must be restored to the government and forfeited. Section 10 stipulates sufficient punishments and penalties, which should be incorporated into Section 36 of the MACCA as a reference. In order to effectively deter potential criminals, criminal law must emphasise imposing sufficiently severe penalties, as a punishment lacking in severity will have minimal deterrent impact.[651] The penalty should be severe, and the offender must be punished according to the

[651] Akhbar Satar, "Five Sentencing Philosophies in the Criminal Justice System," *The New Straits Times*, September 2022, https://www.nst.com.my/opinion/columnists/2022/09/828400/five-sentencing-philosophies-criminal-justice-system

seriousness of his crime.[652] Punishment in any criminal system exists to serve justice to offenders and protect society. Any sentence passed to offenders must serve as both a punishment and a lesson to others, especially public officers, not to do the same.[653] Therefore, Section 36 must be amended and add the additional punishment, similar to Section 10 of the POBO, which requires the defendant to pay the government a payment that does not exceed the whole amount of financial resources he obtained, as well as a payment that does not exceed the value of property he possesses.

The fact that cases involving illicit enrichment in Hong Kong have resulted in successful convictions demonstrates the effectiveness of Section 10 of the POBO Hong Kong. One example of an illicit enrichment case in Hong Kong is ***Attorney General for Hong Kong v. Reid and Others (1989)***.[654] This case involved a corrupt government official who had amassed huge wealth through misuse of office. The official was the deputy director of public prosecutions, and he was well conversant with the anti-corruption laws. He received his corrupt money through his lawyer friends and laundered the proceeds overseas, leaving no witnesses to his corrupt acts to come forward. He was charged with accepting bribes through lawyers to drop prosecutions. He pleaded guilty to controlling assets (HK12.4 million or US$1.5 million) that were disproportionate to his official emoluments and corrupt profits. He

[652] Akhbar Satar, **"**There are Five Punishment Philosophies in the Criminal Justice System," *Astro Awani*, September 2022, https://www.astroawani.com/berita-malaysia/there-are-five-punishment-philosophies-criminal-justice-system-379380
[653] Ibid.
[654] [1993] UKPC 2

was sentenced to nine years of imprisonment under Section 10 of POBO and surrendered his ill-gotten money.

Another example of an IE case in Hong Kong is the case of ***Ernest Percival Max Hunt v. the Queen***.[655] In February 1973, the accused was served with a written notice under Section 14 of the Prevention of Bribery Ordinance (Chapter 201) (POBO) requiring him to furnish to the Director of the Anti-Corruption Office a statutory declaration regarding his assets, expenditures, and liabilities. A similar notice was served on his wife on the same day. In July 1973, a notice under Section 10 of the Ordinance was served upon the accused, who was eventually charged in the District Court under Section 10(1)(a) of that Ordinance. The accused allegedly maintained a standard of living beyond his official income between May 1971 and February 1973. The accused had failed to show a standard of living in excess of one consistent with present or past official emoluments. The learned judge determined that the accused had not provided a "satisfactory explanation" and was therefore guilty of the charged offence. He sentenced the accused to one year's imprisonment.

Hong Kong used Section 10 of the POBO HK as an alternative section when there was no direct evidence of bribery.[656] Section 10's strength lies in its ability to assist in the prosecution and conviction of those found guilty because it tackles hard-core corrupt public officers and brings to book those who receive bribes over a period of

[655] Ernest Percival Max Hunt v the Queen [1974] HKCA 111
[656] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.



Universiti Utara Malaysia

time, even when the assets they possess cannot be linked to any specific corrupt deal. It stipulates that it is an offence for a public officer to maintain a standard of living or possess assets that are not commensurate with his official emoluments.[657] This alternative section is a wise decision by the government of Hong Kong to control the issue of illicit enrichment among its public servants, and this is the appropriate section to charge public servants who have no direct evidence of bribery but have excessive wealth beyond their means. The prosecutor's success in the case and the effectiveness of the provision demonstrate that Hong Kong's IE law is among the best currently in force.

The efficacy of the provision is shown by the fact that cases are successfully prosecuted in Hong Kong and are associated with a few relevant reasons and factors. The first factor in a successful and effective prosecution is the investigation mechanism used by the ICAC. ICAC strives to uphold a high level of professionalism in its investigations. They are among the earliest law enforcement agencies globally to implement video-recorded interviews for all suspects. Additionally, they have a specialised surveillance team of more than 120 highly trained agents who have chosen surveillance as their lifelong profession. They also have many specialised units, such as witness protection, an undercover unit, computer forensics, and financial investigation.[658] Another unique feature of the

[657] The School for Higher and Professional Education (SHAPE), "Corruption Prevention Policy by the Prevention of Bribery Ordinance (POBO)," https://www.shape.edu.hk/corruption-prevent-policy.
[658] Tony Kwok Man-Wai, "Effective Measures to Combat Corruption in Hong Kong," *19th UNAFEI UNCAC Training Programme Visiting Experts' Papers Resource Material Series No.101* (2017).

ICAC is the review mechanism, which consists of the Operations Review Committee. It is a high-powered committee comprised of prominent members, mostly from the private sector, representing society and overseeing the ICAC. The committee thoroughly examines every report of corruption and inquiry to ensure that complaints are addressed correctly and to prevent any attempts at "whitewashing."[659]

Secondly, the governments' strong political will to curb corruption and ensure good governance plays a crucial role in the successful and effective prosecution of a case. The governments of Hong Kong are committed not only to minimising corruption but also to ensuring good governance.[660] Good governance and political will are needed for effective corruption control. Indeed, without political will, anti-corruption measures will fail as they are not supported by the political leaders in a country. Political will is indispensable for effective corruption control because politicians have the power to "change a culture of corruption" as they "make the laws and allocate the funds that enable the laws to be enforced."[661]

Thirdly, another reason for successful prosecution is the separate power of prosecution. According to Article 63 of the Basic Law,[662] the Department of Justice of the Hong Kong Special Administrative Region (HKSAR) shall control criminal

[659] Tony Kwok Man-Wai, "Effective Measures to Combat Corruption in Hong Kong," *19th UNAFEI UNCAC Training Programme Visiting Experts' Papers Resource Material Series No.101* (2017).
[660] Jon S.T.Quah, *Different Paths to Curbing Corruption : A Comparative Analysis*, Emerald Group Publishing Limited (2015).
[661] Ibid.
[662] The Constitution of the People's Republic of China, "The Basic Law of The Hong Kong Special Administrative Region of the People's Republic of China," https://www.basiclaw.gov.hk/filemanager/content/en/files/basiclawtext/basiclaw_full_text.pdf.

prosecutions, free from any interference. The separation of investigation and prosecution powers ensures that no case is brought to court solely on the ICAC's judgment. The ICAC cases are prosecuted by a selected group of public prosecutors to ensure both quality and integrity.[663] The Commissioner of Police heads the Hong Kong Police, and the Director of Public Prosecutions, under the Secretary for Justice, is responsible for all criminal prosecutions in HKSAR.

Furthermore, Article 85 of the Basic Law of Hong Kong[664] ensures an independent judiciary, which results in successful prosecution in cases under Section 10. The ICAC is required to seek prior court approval for exercising certain powers and will carefully consider comments from the court and conduct reviews on operational procedures to avoid misuse of power.[665] The judiciary of Hong Kong is very committed to fighting corruption. They ensure that highly qualified judges in the courts treat ICAC cases fairly.[666]

Fifthly, Section 10 is a powerful weapon in the ICAC's arsenal when investigating corrupt government officers, and it has a special power of investigation against disproportionate assets or lifestyles. Even today, it is possible for a corrupt public

[663] Tony Kwok Man-Wai, "Effective Measures to Combat Corruption in Hong Kong," 19th UNAFEI UNCAC Training Programme Visiting Experts' Papers Resource Material Series No.101 (2017).
[664] The Constitution of the People's Republic of China, "The Basic Law of The Hong Kong Special Administrative Region of the People's Republic of China," https://www.basiclaw.gov.hk/filemanager/content/en/files/basiclawtext/basiclaw_full_text.pdf.
[665] Independent Commission against Corruption (ICAC) Hong Kong Special Administrative Region, "Balancing Forces," https://www.icac.org.hk/en/about/power/check/balance/index.html.
[666] Tony Kwok Man-Wai, "Effective Measures to Combat Corruption in Hong Kong," *19th UNAFEI UNCAC Training Programme Visiting Experts' Papers Resource Material Series No.101* (2017).

officer, if he or she covers his or her tracks well enough, to amass an illicit fortune without leaving any evidence of its origins. It can be notoriously difficult to prove specific acts of corruption; for example, it is impossible to trace cash bribes back to the person who paid them. And so, the wily government officer who has been careful to conceal the source of his or her corrupt wealth would be immune from prosecution were it not for Section 10 of the POBO. Under this provision, a government officer who possesses assets disproportionate to, or maintains a lifestyle incommensurate with, his or her official emoluments, possesses or spends more than he or she has earned legitimately during his or her government service, commits an offence, unless he or she is able to explain how he or she legitimately acquired those assets or was able to maintain such a lavish lifestyle.[667]

On the other hand, Malaysia has a lower prosecution rate for IE cases, as stated in 4.1.7. The number of cases under Section 36 in Malaysia is very limited, and the court has not reported any IE cases.

The burden of proof is another difference between Section 10 of the POBO Hong Kong and Section 36 of the MACCA. Section 10 creates a statutory presumption of unexplained wealth, placing the burden of proof on the accused public official to provide a "satisfactory explanation" of his standard of living or how he acquired his

[667] Jeremy Lo Kwok-Chung, "Combating Corruption in Hong Kong," *138th International Senior Seminar Visiting Experts' Papers* (n.d.).

pecuniary resources or property. This presumption of law approach that was practiced by HK may either place an evidence burden on public officials or notify the accused that inferences might be drawn from their silence. Using a legal presumption that places the burden of proof on the individual seems to be more appropriate in situations involving living beyond means. However, the court must follow a few rules to shift the burden of proof to the defendant. Firstly, the investigation must prove a disproportion between official emoluments and the standard of living or property under control. Secondly, the prosecution must establish a strong prima facie case regarding the unexplained wealth of the public officer.[668] Only then does the burden turn to the public officer, who, if there is an evidential burden, must simply tender sufficient evidence to raise a reasonable doubt as to the issue in question. The prosecution then has to prove its case or disprove the evidence beyond a reasonable doubt. Meanwhile, for Section 36, the burden of proof is always on the prosecution to prove an offence and show that there is excessiveness, considering all the facts such as monthly income, etc. The reversal of the burden of proof to the accused happens only when the prosecution manages to show that there is an excessive amount of wealth from the accused, as mentioned in 4.1.6.

Section 10 of the POBO HK has an even simpler procedure and process than Section 36. Section 36 requires the issuing of a notice, and, depending on the officer's

[668] Lindy Muzila, Eric and Yang, and Urbanavicius Saulius, "Investigation and Prosecution of Corruption: Bribery, Illicit Enrichment and Liability of Legal Persons," in *OECD Anti-Corruption Network for Eastern Europe and Central Asia* (Georgia, 2013), 1–109. & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

reasonable grounds, meanwhile, Section 10 is a straightforward provision in which, if someone's property exceeds his income, the burden is on him to prove his source of wealth. However, when the notices came out under Section 36, no action was taken, and MACCA investigators would rather pursue other options, such as forfeiture of property.[669] So it can be said that the law to prevent illicit enrichment exists and is good enough,[670] but the only thing lacking is enforcement.[671] It is a bit difficult in terms of implementation, and it does not work in Malaysia.[672] So the issue is the implementation, execution, and enforcement of the current law. When Section 36 is not enforced, the law cannot effectively convey an important message to individuals who may commit offences. Therefore, the structure of the penalty for the offence of illicit enrichment allows the offender to potentially receive a lesser punishment. This provision not only contradicts the aim of criminal law and important sentencing concepts, but it also degrades public trust in the justice system.

Universiti Utara Malaysia

Notably, there are two similarities that were found in Section 10 of the POBO HK and Section 36 of the MACCA. The first is the process of gathering evidence. To counter any potential defence under Section 10 of POBO, the prosecutor must compile a variety of evidence, including financial support from family members and documentation of their financial situation, winnings from gambling or illegal off-

[669] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[670] Interview with Respondent 5, Senior Assistant Commissioner. Operation Target Branch. Anti-Money Laundering (AML) Division. Malaysian Anti-Corruption Commission. (January 24, 2020)
[671] Ibid.
[672] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

course betting, and money obtained from illegal sources other than corruption. Other formal or primary evidence that must be presented includes a certification from the Chief Secretary, a report from the accountant, and a declaration confirming the public servant's status as a government employee and their employment history. The same procedures were practised under Sections 36 (1) (b) and 36 (3) of the MACCA. The provision provides Commission officials with the authority to gather information during an inquiry into an offence under the Act regarding the property they have reasonable grounds to believe has been obtained through the proceeds of bribery. The information can be obtained from the suspect, their families, associates, or anyone whom the officer has reasonable grounds to believe can assist in the investigations. Failure to give the relevant information by any party is considered a criminal wrongdoing.

Universiti Utara Malaysia

The second similarity is the section's applicability to both public officers and private individuals. The scope of Section 10 is similar to Section 36, where it is applicable to any person, including public officers and private individuals, as it mentions, 'Any person who, being or having been the Chief Executive or a prescribed officer.'[673] Even though Section 10 of POBO HK focuses on and specialises in both government servants and private individuals, the term official emolument is only applicable to public officials who are accused of living beyond their means.

[673] For further explanation of Section 10: Possession of Unexplained Property, please refer to page 210.

Simultaneously, for Section 36, according to Respondent 4, before Section 36's current amendment, the section was limited to public officers only. However, now it is amended to include 'everyone,' including public and private individuals. It is easy to prove emolument from public officers because they have pay slips, income tax records, and other documents, and they are not expected to earn beyond what is prescribed. However, what about the situation involving public and private individuals? They come from a variety of backgrounds, such as private companies, private businesses, businessmen, and so on,[674] therefore their property and wealth can occasionally exceed their income. So, in order to address the issue of whether official emolument should be applicable to both public and private individuals, we must replicate the provision from Hong Kong, where it uses the term official emolument, and it will only apply to public officers and does not apply to the private individual.

Universiti Utara Malaysia

Due to the fact that the focus of this thesis is primarily on public officers, the researcher will not discuss anything related to private bodies or private individual issues. As a result, the proposed amendments to Section 36 and the definition of official emolument must be applicable to and within the scope of public officers only.

[674] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.

Therefore, Malaysia should learn from Hong Kong's experiences by implementing strict penalties and establishing a minimum limit for fines in cases of illicit enrichment. This will effectively deter potential criminals and send a clear message. The lawmakers should revise and restructure the section with the appropriate punishment. Furthermore, a comparison between cases under Section 10 and those under Section 36 shows that no case is prosecuted under Section 36[675] because its provisions are inadequate, scarce, and have loopholes. Cases under Section 10[676] likewise demonstrate a high success rate.

The law of Hong Kong provides a comprehensive analysis of illicit enrichment to offer policy guidance to those drafting laws and technical guidance to law enforcement and courts charged with enforcing these laws. Therefore, it is highly recommended that Malaysia explores the Hong Kong legal provision to strengthen Section 36, and MACC should apply and enforce similar provisions.[677]

A few considerations should be made to amend and revise Section 36 of the MACCA when referring to and adopting the best practices from Hong Kong.[678] The new amended Section 36 does not necessarily require a predicate offence; it is sufficient to show that the accused has excessive property. On the balance of

[675] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[676] Please refer to cases under Section 10 of POBO HK that were discussed above, Attorney General for Hong Kong v. Reid and Others (1989) and Ernest Percival Max Hunt v. the Queen.
[677] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[678] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.

probabilities, the accused must rebut the charge, and the prosecutor must shift the burden of proof to the accused to prove the source of his excessive wealth.[679] The presumption of innocence is also important because, when there is one, the prosecutor can shift the burden of proof to the accused.

The burden lies with the accused to rebut the presumption, given the challenge of proving corruption directly, therefore, perhaps the presumption might be employed.[680] If Malaysia wants to amend the section, all of the aforementioned issues that were discussed in Chapter 4 must be taken into account, and the new amendment law must be studied to ensure all of Research Question 1's loopholes and weaknesses may be fixed. This analysis will focus on the Hong Kong legal framework regarding illegal enrichment crimes, including the nature of the offence, its prosecution, and the associated challenges. In this regard, the key focus is on analysing the effectiveness of the law and its contribution to eliminating all forms of corruption.[681]

This source reference approach is the process of evaluating information on illicit enrichment laws from other countries, including Hong Kong, that have succeeded in fighting corruption. Besides, the rationale behind choosing Hong Kong as a source of reference for this study is that Hong Kong has already criminalised illicit enrichment

[679] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[680] Ibid.
[681] Mesay Tsegaye Meskele, "The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law," (master's thesis, Faculty of Law, University of the Western Cape, South Africa, 2012), 31.



Universiti Utara Malaysia

under its anti-corruption legal systems. Furthermore, as previously discussed, Malaysia needs to take into account those supporting factors in Hong Kong in order to ensure the successful prosecution of cases within the country.

The prosecution process is greatly aided by investigation and law enforcement's role in fighting corruption, which is crucial to the success of most corrupt prosecutions. When investigations target corrupt officials, legal and institutional shortcomings may have a significant impact on prosecution effectiveness.[682] Unsuitable institutional provisions, especially the insufficient independence of the law enforcement agencies, add to the problem of unsuccessful prosecutions. It should be remembered that the ICAC is effective because of the strong political will of the governments and its favourable policy contexts.[683] A good strategy is used in the investigation mechanism, and cooperation between law enforcement agencies is another key to successfully collecting evidence and bringing about efficient prosecution of corruption. Statutes, procedures, and institutions are usually tailored for efficient prosecution. The full cooperation of law enforcement agencies during all stages of the investigation and the trial in court is a key factor in success, in particular when investigating sophisticated crimes such as corruption.[684]

Universiti Utara Malaysia

[682] ADB-OECD Anti-Corruption Initiative for Asia-Pacific Combating Corruption in the New Millennium, "Effective Prosecution of Corruption," 2003. https://read.oecdilibrary.org/governance/effective-prosecution-of corruption_9789264041394-en#page1.
[683] Jon S.T.Quah, "Different Paths to Curbing Corruption : A Comparative Analysis," *Emerald Group Publishing Limited* (2015).
[684] ADB-OECD Anti-Corruption Initiative for Asia-Pacific Combating Corruption in the New Millennium, "Effective Prosecution of Corruption," 2003. https://read.oecdilibrary.org/governance/effective-prosecution-of corruption_9789264041394-en#page1.

# CHAPTER FOUR

# LEGAL FRAMEWORK ON ILLICIT ENRICHMENT IN MALAYSIA

Since this study seeks to analyse the law of illicit enrichment in Malaysia, this chapter is dedicated to explaining and involving discussion about the data analysis and findings of the issue of illicit enrichment among public sectors in Malaysia. This chapter answered Research Question 1 of this thesis.

## 4.1 Introduction

This analysis chapter discussed challenges, different aspects of illicit enrichment, and Section 36 of the MACCA in accordance with relevant literature reviews, data interviews, and relevant constitutional and human rights challenges.

The law relating to illicit enrichment in Malaysia is Section 36 of the MACCA, which addresses Research Question 1 and Research Objective 1 of this thesis. However, after the data was collected and analysed, the researcher discovered several issues, challenges and weaknesses in the wording, application and implementation of Section 36. Due to these weaknesses, the provision is not strictly enforced. The respondents have expressed their own perceptions and shared their opinions and experiences about the elements and application of Section 36 itself. When the data

regarding Section 36 was engaged, studied, and examined in detail, it showed that the insufficient, poor application and implementation, incompetent element, and jurisdiction of Section 36 itself render it incapable of preventing corruption and illicit enrichment crimes. Furthermore, the study and data analysis results indicated the need for amendments to Malaysia's current illicit enrichment laws. In order to stop the growing problem of illicit enrichment among Malaysian public officers, a new and effective law is needed. The analysis and findings of Research Question 1 are discussed as follows.

The issue of illicit enrichment is a global concern, with numerous cases involving public officers in Malaysia, as reported in newspapers and discussed in Chapter 1's literature review. Crime between the public and private sectors is on the rise because as an industry player, the private sector leverages its connections with public officers to secure business or projects, obtain government approvals, and collaborate.[685] So, they entrusted a public officer with the power to obtain the project or business. In return, public officers will get money (since their wages and salaries are low, they will agree to do it), and the private sector will get the business. Therefore, the illicit wealth that the public officer enjoys was derived from an illegal transaction or corrupt act with the private sector. It is always a win-win situation where the public

[685] Guillermo C. Jimenez and Elizabeth Pulos, "Good Corporation, Bad Corporation: Corporate Social Responsibility in the Global Economy: Corruption in International Business," 2016, https://milnepublishing.geneseo.edu/good-corporation-bad-corporation/chapter/10-corruption-in-international-business/ (accessed March 8, 2021). & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020

officer gets more money while the private sector gets more business and becomes richer. So, this situation illustrates the source of illicit enrichment,[686] and the discussion on the main elements of illicit enrichment in Malaysia is provided below.

4.1.1 The main elements of illicit enrichment crime.

According to the findings of this research, the researcher identified a few main elements of illicit enrichment crime. The illicit enrichment offence consists of five key elements:[687] (1) a public official who (2) during the relevant time period (3) experiences a significant increase in assets[688] and has too much wealth compared to monthly income[689] (4) knowingly and (5) without justification[690] or without explanation of where the wealth came from.[691]

The elements of illicit enrichment or unexplained wealth can be summarised as "a significant increase in the assets of a public officer that he or she cannot explain in a reasonable way in regard to his or her lawful earnings." [692]

Universiti Utara Malaysia

[686] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020
[687] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012). & Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020. & Samah Al Agha, "Illicit Enrichment: Is Reconciliation a Prevention of or an Invitation to Corruption? (The Egyptian Example)," *Journal of Financial Crime* 28, no. 4 (2021): 1022–1031, https://www.emerald.com/insight/1359-0790.htm%0AJFC.
[688] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).
[689] Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020.
[690] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).
[691] Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020.
[692] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012). & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.

The main elements of illicit enrichment are illustrated in Figure 4.1.1 below:

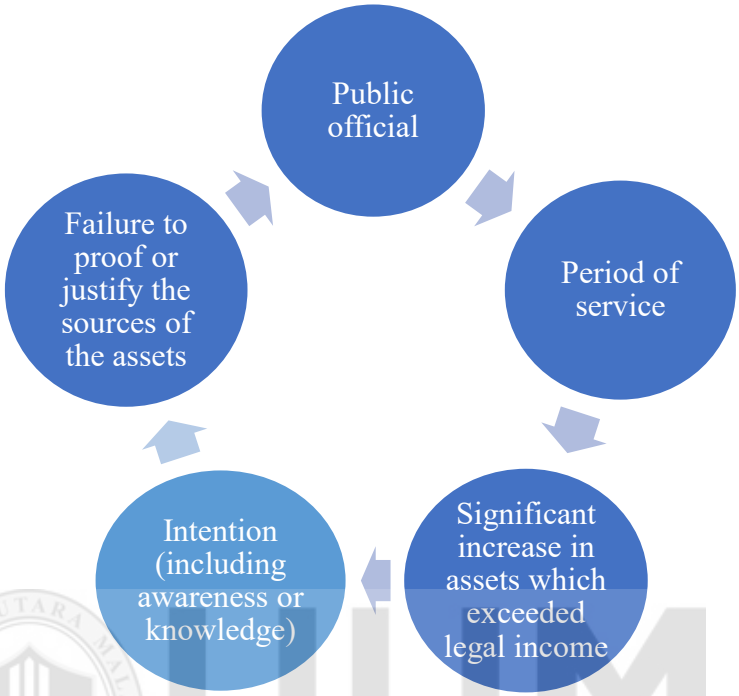



Figure 4.1.1 The Main Elements of Illicit Enrichment

Universiti Utara Malaysia

Accordingly, this conceptual framework was derived and generated from interviews and related legislation, and these elements are present in almost all of the definitions of crime in the UNCAC[693] and IACAC.[694] These conventions also agreed on the same concept of illicit enrichment, which can be summarised in the following definition: "a significant increase in the wealth of a public official, whereby he cannot justify the legitimate sources of such an increase in relation to the lawful resources." The same elements of illicit enrichment crime can also be found under

[693] See subtopic 2.1.2 of this thesis for the definition of IE under Article 20 of the United Nations Convention Against Corruption (UNCAC).
[694] See subtopic 2.1.2 of this thesis for the definition of IE under the Inter-American Convention against Corruption (IACAC).

some legislation on illicit enrichment, such as Egypt Law[695] and Hong Kong,[696] as mentioned in Chapter 3 of this thesis, and the main element of illicit enrichment crime has also been discussed under the literature review of Chapter 1.

The above elements of IE are central to criminal investigation, prosecution, and conviction in illicit enrichment cases. In order for Malaysia to criminalise and implement the law of illicit enrichment, it is crucial for criminal courts to identify and establish the aforementioned essential elements of an offence to effectively convict and sanction criminals of IE.

In the sense of having a proper illicit enrichment law, the main elements of the law must first be evaluated and identified before it can be implemented into Malaysian law. In order to precisely identify the fundamental elements of the offence of illicit enrichment, it is necessary to review the legislation that criminalises this type of behaviour and specifically consider the legislation that describes the crime. Malaysia only has section 36 of the MACCA that governs the illicit enrichment issue.

The elements of the crime of illicit enrichment, as discussed above, fall within the scope of Section 36(3) of the MACCA.[697] However, only two elements align with the crime of illicit enrichment: *"(1) any person who owns, possesses, controls, or holds*

[695] Egyptian IGA Law No.62 of 1975 of Egypt
[696] Prevention of Bribery Ordinance (Chapter 201) (POBO) Hong Kong
[697] Please refer to the conceptual definition of illicit enrichment in subtopic 2.2.2 in chapter 2 for more detail on Section 36 of the MACCA.

*any interest in property that is excessive, considering their current and past income and other relevant circumstances, and (2) the requirement for the person to explain how they acquired such excess. If they fail to provide a satisfactory explanation, they commit an offence."* Essentially, Section 36(3) contains two of the five elements of illicit enrichment.

However, neither of the two elements explicitly stated that possessing unexplained property constitutes a crime. In referring to the case of ***PP v. Abdul Rahman Harun,***[698] despite being charged under Section 36, the court acquitted the defendant because the prosecution was unable to prove the crime originated from predicate offences under the MACCA. The court also did not charge him with possessing unexplained wealth that exceeded his lawful income, even though the two elements of IE crime are present in Section 36(3). This demonstrates that Section 36 is a provision that cannot operate independently, and the possession of unexplained property must be proven to be coming from illegal proceeds. As provided under Section 36, it requires the prosecutor to prove a crime under a predicate offence before considering it a crime, as Malaysia only considers illicit enrichment a crime when it results from a predicate offence, and it is not a standalone provision.[699] This is further discussed in Subtopics 4.1.4 and 4.1.9.

Universiti Utara Malaysia

[698] [2014] 7 CLJ 943
[699] Cynthia Gabriel, "For Tracking Unexplained Wealth, C4 Recommends Tightening of MACC Act," *Malaysia Kini*, 2017, https://www.malaysiakini.com/letters/379694 (accessed June 15, 2018). & Malaysian Bar, *Memorandum for the Reform of the Malaysian Anti-Corruption Commission*, 2015.

So, the provisions of Section 36 itself have so many issues, challenges, and weaknesses, which were supported by findings from respondents' data and literature review. As a matter of fact, there are a few issues and challenges to prove living beyond means or illicit enrichment in Malaysia, which are further explained and discussed hereunder, together with the discussion on the lacunas of Section 36.

4.1.2 There is no specific definition of illicit enrichment under Malaysian Law.

In Malaysia, the MACC Act 2009 provides a section on illicit enrichment, however, the term 'illicit enrichment' in Section 36 is not expressly stated,[700] and it does not mention illicit enrichment as a specific crime.[701] According to Respondents 3,4,5,7,8, and 9, illicit enrichment itself is an offence and a crime in Malaysia.[702] However, there is no specific definition of illicit enrichment under Malaysian law.[703] The definition of illicit enrichment under Malaysian law is discussed further in subtopic 4.1.14.

[700] Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020.
[701] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020. & Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019.
[702] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020. & Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020. & Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020. & Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020. & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[703] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.

4.1.3 Illicit enrichment is not specified as a crime or specific offence under Malaysian law.

Illicit enrichment is about acquiring wealth by illegal means, and the property owned exceeds the legal income. Since the profit obtained by the public officer was obtained in a wrongful way,[704] any case involving the increase in wealth of the public officer can be considered some sort of illicit enrichment,[705] and it is a crime[706] when there is excessiveness with the wealth after the financial analysis.[707]

Besides, illicit enrichment is also related to the crime of corruption, and it is against the law.[708] So, there should be a specific offence saying that illicit enrichment is a crime, which cannot be found under any provision of Malaysian law. Illicit enrichment originates from the proceeds of crime, or from the proceeds of illegal activities[709] or something related to it, and public officials get benefit from it and enjoy their wealth from illegal activities.[710] One respondent even said that there is no law on the crime of illicit enrichment in Malaysia.[711] Since illicit enrichment is not

[704] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020. & Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020.
[705] Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[706] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.
[707] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[708] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[709] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.
[710] Ibid.
[711] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.

categorised as a main offence, it is impossible to enforce[712] due to certain issues and circumstances, which are based on data from the respondents and the review of the literature. The following sections further discuss the issues and circumstances.

4.1.4 Section 36 can only be pursued when an investigation under the predicate offence of MACC is underway, and illicit enrichment must be proven under the predicate offence.

Section 36 is a provision that cannot operate independently, and the illegal assets must be proven to be coming from illegal proceeds. As provided under Section 36, it requires the prosecutor to prove a crime under a predicate offence before considering it a crime, as Malaysia only considers illicit enrichment a crime when it results from a predicate offence.[713] This situation gets even more complicated because this particular provision does not stand alone and does not operate independently, but as an upshot in the course of investigations of corrupt offences against public officials. Based on the practicality of other cases, MACC cannot charge any person under Section 36 before completing the investigation. Investigation is important to find out if there is any element of the primary offences under MACCA, such as bribery, false claims, or abuse of power, and if the elements of living beyond means are present from the result of the investigation, then only MACC will serve notice first under

[712] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[713] 'Predicate offences' or 'prescribed offences' are discussed in Chapter 2. & Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.

Section 36.[714] Besides that, the power of the officer under this section is also limited in its reach as it has to be connected with a crime stated in the MACC Act.[715] So, Section 36 provides that measures to pursue illicit enrichment can only be taken when an investigation into another offence under MACCA is underway. So, there must be 'something' to trigger the investigation, because, looking at Section 36(1), it is based on "*if there is reasonable ground to believe, based on the investigation.*" In other words, what exactly triggers Section 36? It must be an investigation first, carried out by an officer of the Commission. Section 36 does not automatically constitute an offence, as it differs from Section 23 of the MACCA, which deals with abuse of power. The component of Section 36 must be from 'something' that could trigger the investigation, and there is reasonable ground to believe that the property is held for a predicate offence under the said Act.[716] Therefore, the weakness of Section 36 is that if there has to be an investigation into a person under any section of the said Act, then only MACC can issue a notice under Section 36.[717] Then, MACC will identify how the assets are acquired by the accused by serving notice under Section 36.[718]

Universiti Utara Malaysia

[714] Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019.
[715] Cynthia Gabriel, "For Tracking Unexplained Wealth, C4 Recommends Tightening of MACC Act," *Malaysia Kini*, 2017, https://www.malaysiakini.com/letters/379694 (accessed June 15, 2018). & Malaysian Bar, *Memorandum for the Reform of the Malaysian Anti-Corruption Commission*, 2015.
[716] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[717] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.
[718] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019. & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

Moreover, this section only prescribes an investigation and penalty against the offence of illicit enrichment, and it authorises the MACC to get information in connection with any property held or gained by a person.[719] Section 36 of the MACCA is about information gathering exercises on how wealth is obtained by individuals, and after information is obtained, the MACC will decide whether there is any infringement on the MACC laws.[720] It is MACC's role to investigate any wrongdoings involving illicit enrichment.[721] However, Section 36 does not classify possessing unusual or unexplained wealth as an offence, as it only grants MACC the authority to inspect property if it is associated with an offence under MACCA.[722] As provided under Section 36(3), "*if any person fails to explain satisfactorily the sources of his excessive property, he commits an offence and shall, on conviction, be liable to imprisonment and a fine*." This somehow limits the power of the MACC officer to completely investigate issues in connection with corruption,[723] because the MACC officer only requires reasonable grounds to believe, based on the investigation conducted by them, that the accused has excessive wealth and a reasonable explanation by the accused about the possession of the property. This limitation shows the weaknesses of the said section in connection with living beyond means issues.

Universiti Utara Malaysia

[719] Cynthia Gabriel, "For Tracking Unexplained Wealth, C4 Recommends Tightening of MACC Act," *Malaysia Kini*, 2017, https://www.malaysiakini.com/letters/379694 (accessed June 15, 2018).
[720] Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020.
[721] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[722] Cynthia Gabriel, "For Tracking Unexplained Wealth, C4 Recommends Tightening of MACC Act," *Malaysia Kini*, 2017, https://www.malaysiakini.com/letters/379694 (accessed June 15, 2018).
[723] Ibid.

Based on the essence of Sections 36(1) and (3) of the MACCA, if there are reasonable grounds to believe that a public officer under investigation possesses assets in excess of their present or past incomes, the burden of proof lies on the officer to provide an explanation for the excess.[724] This is because Section 36 is about excessiveness of income, and it is an offence if the accused cannot justify the excessiveness. However, that is not how Section 36 works, because it is not a straightforward provision.[725] As provided under Section 36(3), the meaning of "*having regard to his present or past emoluments and all other relevant circumstances*" involves MACC's forensic accounting process, which is conducted by identifying the excessiveness of a person's legal income, and when the accused cannot justify that, that is a crime. Before the calculation, MACC must have all the legal supporting documents to determine the legitimate income. The process of Section 36 works by serving an order to the accused, and MACC will validate that by comparing their legitimate income that has been declared with the expenditure that he spends, including savings money that he has. Therefore, if the officer notices any excessive spending, they will question the accused, and if the accused is unable to provide a justification, they will be found in violation of the law. There must be a reason to believe by the MACC officers when they issue the 36 orders. As previously mentioned a few times in the analysis, in order to initiate an investigation under Section 36, a predicate offence case must be established under four main sections:

[724] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[725] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.

sections 16, 17, 18, and 23. Additionally, the MACC must receive a report from the public or a whistleblower indicating that a public officer of a lower grade possesses substantial wealth.[726] Since Section 36 did not specify that illicit enrichment is an offence in Malaysia and only mentioned if there was excessive wealth in an indirect way and did not mention illicit enrichment directly, it is quite complicated to justify whether the excessive wealth comes from corrupt offences because it might come from any illegal activities such as gambling, and it is not necessarily from corruption only.

Even the provision itself does not specify that the wealth must originate from corrupt offences; it merely indicates that the property is excessive. So, the calculation and forensic accounting involved in determining the excessiveness of wealth must start when they suspect any occurrence of a corruption offence.[727] However, having to prove the wealth from the proceeds of corruption and the procedures is a problem for MACC, because if the excessiveness has nothing to do with the corruption crime, then there will be no further action by MACC.[728] Besides, the acquisition of excessive wealth among public officers must be proven illicitly, and the acquisition

Universiti Utara Malaysia

[726] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019. & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[727] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[728] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.

of wealth must come from corrupt offences, and MACC cannot simply open a record saying someone has excessive wealth, as compared to Hong Kong law.[729]

Even though the wording and title in Section 36 do not specifically mention anything related to illicit enrichment, the spirit under Section 36(3) of the same Act is indeed to combat or prevent offences related to illicit enrichment, since the provision provides for a person to declare the property owned and Section 36(3) further stated that "*where the officer of the Commission has reasonable grounds to believe that any officer of a public body who has been served with the written notice owns, possesses, controls, or holds any interest in any property which is excessive, and if he fails to explain satisfactorily such excess, he commits an offence and shall on conviction be liable to imprisonment and fine."*[730] Section 36(2) further added that "*Any person who wilfully neglects or fails to comply with the terms of the notice commits an offence and shall, on conviction, be liable to imprisonment and a fine*." However, the spirit alone is not enough for the officer to do an investigation against a public officer who lives lavishly if the provision of Section 36 does not state specifically that illicit enrichment is an offence.[731]

[729] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[730] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020. & MACC Act 2009
[731] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020. & Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020. & Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020.

Briefly, Section 36(1) states that,[732] in such a situation, for a notice under Section 36(1) to be issued, the commissioner must reasonably think that the property acquired was obtained in connection with a crime that has been committed under this act. So, the main question is, if it has been proven that he committed an offence, MACC has chosen to issue a notice under Section 36(1) rather than accuse him of the offence. Therefore, it can be inferred that in these circumstances, if MACC wants to prove the case, they need a witness to prove that the person has committed an offence, and the evidence must be sufficient. However, usually, it is difficult for prosecutors to prove an offence has been committed under the act, making it difficult to proceed under Section 36. Therefore, how can Section 36 be applied to the situation if the predicate offence cannot be proven?[733] So, the case of illicit enrichment is limited because a predicate offence cannot be proven by the prosecutors. It is compulsory to show that an offence has been committed under Section 36.

Universiti Utara Malaysia

Under our Constitution, a Malaysian citizen has the right to possess property and enjoy excessive wealth. Article 13 of the Federal Constitution protects a person's right to property, where the right to acquire, hold, and enjoy property is a fundamental right guaranteed by the Federal Constitution.[734] However, it is not an

[732] Malaysian Anti-Corruption Commission Act 2009 [Act 694] & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[733] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[734] Please refer to the court's judgement in the case of Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat; Amitabha Guha & Anor v Pentadbir Tanah Daerah Hulu Langat *[2017]. MLJU 535*

absolute right since ownership of property is subject to what is provided for in the Federal Constitution. One's property can be acquired by the State. However, that acquisition would have to be carried out in accordance with law.[735]

Thus, having excessive property or assets does not constitute an offence. The right to property, however, only applies to those who earn it lawfully, rather than through criminal activity. Despite the constitutional protection of rights to property, this right is not absolute but rather qualified with several restrictions. The acquisition must be "in accordance with law." [736]

Therefore, how can a public prosecutor determine whether the excessive wealth in the Section 36 case is related to corrupt money? The prosecution must determine the mechanism and sources of the money, how and why the transaction occurred, and whether it was legitimate or not. When the prosecutor makes an application to the court, it must be supported by an affidavit, and they must show evidence that the source of the money comes from illegal acquisitions. According to Sections 40 and 41 of the MACCA, "*if the public prosecutor is satisfied that such property has been obtained as a result of or in connection with an offence under this Act, he can apply to the court for an order to forfeit the property*."[737] So, it is important to show that the property or money was obtained by illegal activity or in connection with a crime,

[735] Please refer to the court's judgement in the case of Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat; Amitabha Guha & Anor v Pentadbir Tanah Daerah Hulu Langat *[2017]. MLJU 535*.
[736] Please refer to the court's judgement in the case of Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat; Amitabha Guha & Anor v Pentadbir Tanah Daerah Hulu Langat *[2017]. MLJU 535*
[737] Malaysian Anti-Corruption Commission Act 2009 [Act 694].

and you must also show that the crime has been committed.[738] However, just forfeiting the property is insufficient, because Sections 40 and 41 did not impose any penalties or punishment on the accused in a matter of possessing property illegally. If the prosecution unable to prove the acquisition of the property was illegal, they will use Sections 40 and 41 as an alternative to Section 36, demonstrating the inadequacy and weaknesses of that provision by using another section as an alternative provision for it. However, this alternative provision is insufficient to address issues relating to illicit enrichment because it simply serves as an alternative to Section 36.[739]

For the purpose of implementing Section 36, MACC has to go through the 'predicate offences,' and the main challenge is to get the details of ownership of the asset where it needs to be analysed beforehand. Analysis is time-consuming, and it is necessary to get cooperation from the relevant parties, such as the bank or financial institutions. The process of dealing with the bank is also not easy because, even though, for example, the case happened in Perlis, MACC in Perlis still needs to get clearance from the MACC Head Quarter in Putrajaya,[740] as provided under Sections 36(3) and 36(1)(c). The prosecution will need to collect evidence, often circumstantial, to support the idea that the unexplainable wealth is a result of corrupt activities. [741]

Universiti Utara Malaysia

[738] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[739] The insufficiency of sections 40 and 41 of the MACCA is further explained in 4.1.15.
[740] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[741] Guillermo Jorge, *The Romanian Legal Framework on Illicit Enrichment* (Washington, DC.,2007), 13.

The difficulty and process of proving property from the proceeds of crime vary on a case-by-case basis. For example, if there is any transaction in the bank account, MACC can trail that account. However, if the corruption is received in cash, it is quite hard to prove as it must be proven with inference. For example, the accused used the money to buy property, and the property was said to have been bought using cash money, and the cash money was assumed to have been received as a bribe. But of course, you must verify some other information, and the prosecution has to prove that he has received bribery, whether in cash or by other means. But when it is in cash, there is usually no trail, and it must come with evidence. Or else it is hard to charge without proof; that is the weakness of the section where a predicate offence must be proven.[742]

Although there is legislation to prevent illicit enrichment, it is ineffective and practically impossible to implement. When MACC observes a public official having luxurious cars, they can infer that he might have committed an offence. However, the MACC finds it difficult to trace the sources of the property because illicit enrichment occurs when there is no direct evidence to support the case. Additionally, the MACC will charge him under another section of the same Act or another Act if the offences have been proven under predicate offences in order to prevent double jeopardy. So that is Section 36's disadvantage. What makes MACC law different from Hong Kong is that Hong Kong does not need to prove a predicate offence, it is enough to

[742] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.

charge him at the court if the prosecutor sees a public official having excessive wealth, then he has to give an explanation to the court,[743] which is further discussed under Research Question 3.

Furthermore, with modernisation and technological innovation, illicit enrichment cases are very complex. Previously, back in the 1980s, the government used to provide a tip allowance for travel claims, allowing government officials to claim tips they gave to others during their outstation trips for work-related purposes.[744] This is referred to as 'padding travel expenses', it is a kind of embezzlement.[745] Perhaps the most subtle form of embezzlement is the practice of making inspection trips or other official trips when that minister or public official himself decides when and how often trips should be made. Even hotels and restaurants are willing to provide false bills. By these means, claims for travel allowances can be ensured to flow in, conveniently increasing the payroll.[746] However, the culture is no longer practiced since it encourages bribery by public officers.[747]

Nowadays, corruption and illicit enrichment among public officers are similar to the cases of abuse of power as compared to those early days' way back in the 90's. MACC saw numerous instances of petty corruption, but due to increased public

[743] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[744] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[745] For comprehensive explanation on embezzlement, please refer to chapter two, subtopic 2.4 and Syed Hussein Alatas, *The Sociology of Corruption: The Nature, Function, Causes and Prevention of Corruption* (Times Books International, 1968).
[746] Syed Hussein Alatas, *The Sociology of Corruption: The Nature, Function, Causes and Prevention of Corruption* (Times Books International, 1968).
[747] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.

awareness, these cases are now less common.[748] The current technology and modernisation make the perpetrators of corruption even smarter at committing bribery. According to the current pattern of corrupt offences, the offenders use offshore countries to conceal their illegal proceeds. Then, they hire professional workers and get professional help from lawyers and accountants to consult and advise them on how to conceal the illegal activity.[749]

4.1.5 The wording under Section 36 can be disadvantageous to the prosecution.

Section 36(3), subsection (1), mentions the "*officer of a public body who owns, possesses, controls, or holds any interest in any property which is excessive, having regard to his present or past emoluments and all other relevant circumstances.*" However, the wording "*other relevant circumstances*" has no limitation, and if the MACC wants to limit, what is the mechanism for doing so? This can sometimes create injustice, and if it is too open, the person or the defence counsel will take advantage. So, the wording for this section and this situation will cause dilemmas and problems,[750] as the law itself must be strong enough and must consider the whole situation. Besides, this wording can also be unfavourable to the prosecution. The wording '*taking into account related circumstances*' is something that prosecution can manoeuvre. Other relevant circumstances could be anything that they can create

[748] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[749] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.
[750] Ibid.

as legitimate sources. Prosecution can prove the pattern where he lives lavishly, but to secure MACC's conviction is difficult, in a sense that he can manoeuvre because in Section 36, it stated that to take into account "*any interest in any property which is excessive, having regard to his present or past emoluments and all other relevant circumstances*." As decided in the case of ***PP v. Abdul Rahman Harun [2014] 7 CLJ 943***, in the judgement of the high court, the wording '*related circumstances'* involves many things to consider, such as claims, bonuses, etc. The defence council will also come up with so many reasons because the law is quite open for the prosecution to justify. However, it must be balanced and cannot contradict the Federal Constitution, which is entitled to property rights[751] as previously mentioned. Since there were so many issues raised during the trial of this case, the accused was acquitted by the court, and this case is further discussed below under subtopic limited cases under Section 36 of the MACCA. Besides, the scope of illicit enrichment is wider and not specific to Section 36 only. This issue is quite tricky because the wording is 'the property held is the result of or related to 1 offence,' so MACC must show that the person fails in a form of 36 relating to 1 offence. However, some public officers only fail to declare assets, not illicit enrichment. For example, in the case of the former Selangor Menteri Besar Tan Sri Muhammad Taib.[752] In 1998, he was charged under the Prevention of Corruption Act 1961 (Act 57) pertaining to his failure to declare all his assets. When the Anti-Corruption Agency (ACA) asked him

[751] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[752] Pendakwa Raya v Tan Sri Muhammad bin Muhammad Taib [1999] 2 MLJ 305; [1999] MLJU 123

to declare assets, he refused to do so. In his defence, he claimed that he did not declare the property because it is in the process of being transferred, and he came up with the memorandum of transfer but has not stamped yet. The prosecution failed to make out a prima facie case, and he was acquitted by the court. This shows the weakness of Section 36 and how sometimes Section 36 can be technically rebutted, and it is only an offence of failure to declare certain assets, and that does not mean the assets are from illegal proceeds. Section 36 is the only requirement by MACC for asset declaration after there has been a prior investigation and a sense of suspicion by MACC. Section 36 is not illicit enrichment per se, and in order to trigger Section 36, there is a process of requesting a person to declare his assets that are not commensurate with his emolument, and when he cannot provide or give a proper explanation, then it becomes an offence under Section 36. However, does that make it illicit enrichment? That is the question, and it needs to be proven. Despite the fact that the process is pre-requisite under Section 36, MACC officers still need to comply. But that does not mean that the non-declaration of that particular property is an illicit gain or illicit property. All charges under Section 36 are against individuals who failed to declare their assets, failed to comply, and were unable to provide a justification. Even if he declares all of his property, and MACC's net worth analysis reveals an excessive amount, can MACC still conclude that the property is illegal? Just a mere excessive use of property will not automatically render the whole property illegal.[753]

[753] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21,

4.1.6 The Presumption of Innocence and the Reverse Burden of Proof.

This subtopic discusses the issue of presumption of innocence and burden of proof in the prosecution of illicit enrichment. In traditional criminal cases, the prosecution must establish the accused's guilt, ensuring that an individual is presumed innocent until proven otherwise.

It is a fundamental principle in all legal systems globally that the public prosecutor possesses the jurisdiction to initiate legal proceedings for any criminal offence and is obligated to bear the burden of proof.[754] The burden of proof is defined as "*the prosecution must prove the accused person's guilt beyond reasonable doubt*." Meanwhile, on the other side, the presumption of innocence is deemed a fundamental principle of human rights, which means: "*the accused shall remain innocent until proven guilty beyond reasonable doubts*."[755] According to the European Convention on Human Rights and Fundamental Freedoms (ECHR), Article 6(2) uses the following formulation "*everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law*."[756] The presumption of innocence concerns fair trials, the right of a person to remain silent, and the principle of innocence until proven guilty beyond reasonable doubts.

Universiti Utara Malaysia

2020.

[754] Douglas N. Walton, "Burden of Proof, Argumentation," 2 (1988): 233–254. & A. Saadna, "Burden of Proof in the Algerian Law," University of Biskra Repository, 2014, 197-198.

[755] Amnesty International, *Amnesty International: Fair Trial Manual*, 2nd ed. (London, United Kingdom: Amnesty International Publications, 2014).

[756] Guillermo Jorge, *The Romanian Legal Framework on Illicit Enrichment* (Washington, DC., 2007), 13.

The offence of illicit enrichment was created as a legal mechanism designed to address the challenges of meeting the burden of proof in corruption-related offences.[757] Illicit enrichment is the most difficult corruption crimes to trace because it represents the accumulation of other corruption offences that were committed over the term of service with the utmost secrecy.[758] The concept of illicit enrichment shifts the burden of proof from the public prosecution to the defendant for the purpose of explaining the lawful sources of excessive wealth or any part of it.

The burden of proof can be shifted from the prosecutor to the defendant in some cases, like in cases of money laundering, tax evasion, smuggling, terrorism, and illicit enrichment.[759] When the burden of proof is reversed, the accused must provide evidence to prove their innocence, which can undermine the fundamental legal principle that everyone is innocent until proven guilty. The reversed burden of proof is considered unfair to the right of presumption of innocence in criminal cases because it shifts the responsibility of proving innocence onto the accused, rather than requiring the prosecution to prove guilt beyond a reasonable doubt.

In cases of illicit enrichment, the burden of proof lies on the public officer to provide evidence that the wealth was obtained through lawful means. The Inter American

[757] Guillermo Jorge, *The Romanian Legal Framework on Illicit Enrichment* (Washington, DC., 2007), 13.
[758] Alexandra Habershon and Stephanie E. Trapnell, *Public Office, Private Interests: Accountability through Income and Asset Disclosure.* (Washington, D.C.: Stolen Asset Recovery (StAR) & World Bank Publications, 2012).
[759] Mohannad Ahmad Abu-Morad, Zainal Amin Ayub, and Fauziah Mohammad Noor, "Burden of Proof and Presumption of Innocence in the Prosecution of Illicit Enrichment with Reference to the Jordanian Legislation," *Journal of Law, Policy and Globalization* 49 (2016).

Convention Against Corruption (IACAC) introduced this new approach to prosecuting corruption in 1996. Then, other international conventions adopted it, such as, the United Nations Convention Against Corruption (UNCAC) 2003, the African Union Convention of Preventing and Combating Corruption (AUCPCC) 2003, the Economic Community Organisation of West African States (ECOWAS) 2001, the South African Development Community SADC Protocol (2005), and the Arab League Convention against Corruption (2010). Therefore, it is essential for the public officer to provide evidence of the legal source of such an increase, otherwise, it will be considered illicit enrichment.[760]

This research focuses on countries that have created a positive experience from a broad overview of existing approaches to the reversal of the burden of proof, such as India, Pakistan, Argentina, China, Jordan, Egypt, and Hong Kong, a jurisdiction well experienced in prosecuting public officials under this offence for more than forty years. These countries believed that the adoption of illicit enrichment offences assisted in the detection of corruption and improved the effectiveness and success rate of prosecutions.[761]

Accordingly, the criminal justice system in Jordan also shifts the burden of proof from the public authorities to the accused. In some cases, involving illicit

[760] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank & UNODC, 2012).

[761] Lindy Muzila, Eric and Yang, and Urbanavicius Saulius, "Investigation and Prosecution of Corruption: Bribery, Illicit Enrichment and Liability of Legal Persons," in *OECD Anti-Corruption Network for Eastern Europe and Central Asia* (Georgia, 2013), 1–109.

enrichment,[762] public officials are obligated to provide a reasonable explanation for the substantial increase in their assets in relation to their lawful income during their service. However, the Illicit Enrichment Law in Jordan only partially shifts this obligation to the person under investigation, as the prosecution is still obligated to prove the misuse of power or position. In contrast, the defendant must prove the legal source of the excess wealth.[763]

Furthermore, according to the European Court of Human Rights (ECHR) case law, there are three situations when the burden of proof does not solely lie with the prosecution: (a) strict liability offences, (b) cases involving a confiscation order, and (c) offences where the burden of proof is reversed. Therefore, an example of an offence where the legal reverse of the burden of proof occurs is illicit enrichment.[764]

In Malaysia, the presumption of innocence is implemented in line with the legal provisions mentioned earlier. The burden of proof under Section 36 of the MACCA is always on the prosecution to prove an offence and show that there is excessiveness, considering all the facts such as monthly income, etc. The reversal burden of proof to the accused happens only when the prosecution manages to show that there is an excessive amount of wealth from the accused. However, securing a conviction is quite difficult because the burden can be rebutted and can be reverse

[762] Jeffrey R. Boles, "Criminalizing the Problem of Unexplained Wealth: Illicit Enrichment Offenses and Human Rights Violations," *Legislation and Public Policy* 17, no. 835 (2014).
[763] Mohannad Ahmad Abu-Morad, Zainal Amin Ayub, and Fauziah Mohammad Noor, "Burden of Proof and Presumption of Innocence in the Prosecution of Illicit Enrichment with Reference to the Jordanian Legislation," *Journal of Law, Policy and Globalization* 49 (2016).
[764] Guillermo Jorge, *The Romanian Legal Framework on Illicit Enrichment* (Washington, DC.,2007), 13.

back.[765] So, the only difficult challenge is in terms of burden of proof, where the burden of proof in most cases of public officers having excessive wealth is really hard and complicated, and to prove the acquisition of assets from corrupt activity is difficult. It is not easy for MACC to identify and prove the money owned by a public officer comes from corrupt offences because illicit enrichment must be proven from a predicate offence of corruption,[766] as already discussed under subtopic 4.1.4. This limitation is the reason for the limited number of cases under Section 36, and the difficulty of securing a conviction often results in the unsuccessful prosecution of Section 36 cases.[767]

There is one section under MACCA that establishes a rebuttable presumption that a gratification has been corruptly received unless the contrary is proven,[768] which is Section 50, 53(3), presumption in certain offences of MACC.[769] According to the experts, incorporating the rebuttable presumption in Section 50 of the MACCA is relevant to several corruption cases. It serves as a good example of a measure that might increase the chance of successful prosecution.[770]

It is patently clear that Section 50(1) of the MACCA establishes that the presumption can be invoked against a person if it is conclusively proven that they have “received

[765] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[766] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[767] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & Country Review Report of Malaysia" United Nations Office on Drugs and Crime, 2013.
[768] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[769] Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020. & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[770] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.

or agreed to receive" any form of gratification. This presumption of corruption places the burden of proving the facts on the accused person, who must rebut the presumption on a balance of probabilities basis. Prior to invoking the presumption, the prosecution must prove the first two factual elements of the offence. Firstly, the prosecution must prove that gratification was given or received. Secondly, at the time of payment or gift, the receiver of the payment or gift is a public officer or in the employment of a public body.[771] Once these two factual ingredients are established, then the existence of the third ingredient of the offence, i.e., that the gratification was paid, given, or received corruptly as inducement or reward for doing or forbearing to do any act in relation to the affairs of that public officer or the public body concerned, is to be presumed, unless the contrary is proved by the accused.[772] The burden is on the accused to show that he did not receive the gratification with corrupt intent. He must take this action to raise a reasonable doubt about the prosecution's case against him. In a corruption prosecution, a defence may have more to lose than a defence in any other kind of criminal proceeding. In a corruption case, the defendant must disprove the assumption on the balance of probability.[773] The prosecution must still prove its case beyond a reasonable doubt if the accused fails to rebut the assumption on the balance of probability. According to this section, once it has been proved that a gratification has been received, it shall be presumed that it was

Universiti Utara Malaysia

[771] Dato' Saidin Hamby v. PP [2012] 4 CLJ 84
[772] Rohana Abdul Rahman et al., "The Law on Presumption in Corruption Cases in Malaysia," *International Journal on Graft and Corruption Research* 2 (2014).
[773] Ibid.

corruptly received, unless the contrary is proved.[774] However, in cases related to illicit enrichment, if the prosecution fails to prove that the excessive wealth originates from a corrupt act, the presumption under Section 50 does not apply.

Since the focus of this research is to criminalise and enforce the crime of illicit enrichment, this research proposes and addresses the reversal of the burden of proof or reverse-onus provision in the prosecution process of the said crime. Malaysia must openly recognise reverse-onus provisions or reverse burden of proof for the accused and require the accused to explain the source of his assets during prosecutions and prove his innocence. Illicit enrichment statutes therefore relieve the prosecution of the burden of presenting direct proof of corruption and linking the unlawful assets to a predicate offence through this reverse-onus provision. When evidence of disproportionate assets is presented, the element potentially generates a presumption of corruption.[775] Reverse-onus measures must be adopted as a means of punishing corrupt officials who are successful in covering up the illegal activities but not the benefits received as a result of such dealings.[776]

The benefits of criminalising illicit enrichment are connected to the standard of proof needed to secure a conviction. The prosecution must establish beyond a reasonable

[774] United Nations Convention against Corruption, Country Review Report of Malaysia, 2013.
[775] Jeffrey R. Boles, "Criminalizing the Problem of Unexplained Wealth : Illicit Enrichment Offenses and Human Rights Violations," Legislation and Public Policy 17, no. 835 (2014): 835–880.
[776] Article 14 of the International Covenant on Civil and Political Rights (ICCPR) provides the basic right to be presumed innocent until proven guilty, "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

doubt that the accused's assets are out of proportion to his legal income in order to show illicit enrichment as a corruption charge. In this regard, the prosecution need not establish that the defendant took a bribe or engaged in any other corrupt behaviour. Unless the contrary is proved, wealth that is out of proportion to a public officer's legal income is assumed to have derived from corruption. In this situation, the burden of proof is eased, and it is not necessary for the prosecutor for the prosecutor to prove that the wealth in question was obtained through corruption.[777]

Furthermore, the presumption is necessary to fight corruption for a variety of reasons. First, as previously mentioned, gathering evidence presents significant challenges because it is a consensual crime involving powerful individuals. Second, the defendant typically has a better understanding of their source of wealth, making it difficult for the prosecution to prove a causal connection between wealth and specific transactions. Thirdly, in the absence of the presumption, the prosecution would need broader investigative authority over the defendant's financial affairs because the defendant may decide to stay silent without facing conviction. Lastly, even if direct evidence of the *actus reus* is obtained, proving the *mens rea* might be challenging if an official claims that they believed the payment was a gift.[778]

Universiti Utara Malaysia

[777] Mesay Tsegaye Meskele, "The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law," (master's thesis, Faculty of Law, University of the Western Cape, South Africa, 2012).
[778] Guillermo Jorge, *The Romanian Legal Framework on Illicit Enrichment* (Washington, DC.,2007), 13.

Despite efforts to use the prosecution of illicit enrichment as a weapon in the combat against corruption, there are concerns triggered by some prosecutions and scholars about this new method of reverse-onus provision. This reverse onus provision in illicit enrichment prosecution is not necessarily ideal because of the friction with human rights norms, namely the right to a fair trial for the accused, especially the right to a presumption of innocence.[779] Besides, some scholars and legal jurisdictions are against shifting the burden of proof to the defendant to protect fundamental human rights, emphasising the importance of maintaining a balance between the rights of the accused and those of society.[780] On the other hand, al-Marsafawi (1981), Abdul Jaleel (2004), and al-Kholafi (1997) argue that in cases of illicit enrichment, although the burden of proof does not entirely shift from the prosecution to the public official, it does represent a fair way of balancing the burden between the prosecutor and the defendant. Instead of exaggerating the presumption of innocence, the burden of proof should be seen as a tool to combat corruption and prevent corrupt officials from profiting from the proceeds of their crimes.[781] We are better positioned to have an open discussion about what other changes can help alleviate concerns about procedural injustice to the accused and the potential of convicting legally innocent defendants because they could not meet their burden once we openly

Universiti Utara Malaysia

[779] Worku Yaze Wodage, "Burdens and Standards of Proof in Possession of Unexplained Property Prosecutions," *Mizan Law Review* 8, no. 1 (2014).
[780] Mohannad Ahmad Abu-Morad, Zainal Amin Ayub, and Fauziah Mohammad Noor, "Burden of Proof and Presumption of Innocence in the Prosecution of Illicit Enrichment with Reference to the Jordanian Legislation," *Journal of Law, Policy and Globalization* 49 (2016).
[781] Ibid.

acknowledge that reverse-onus provisions weaken the presumption of innocence as well as the right to remain silent.

Some legal systems oppose this idea because it contradicts fundamental human rights and constitutional norms, as seen in the United States and Canada. Furthermore, some scholars argue that shifting proof undermines the fundamental principle of fair trials and could lead to misuse, resulting in biased prosecution. It is clear from the evidence that the responsibility to bear the burden of proof lies with the prosecution. Illicit enrichment, which is often linked with serious offences, including organised crime, money laundering, and terrorism, is a form of corruption that requires the accused to describe the relationship between their significant assets and legitimate sources. This approach is justified by the necessity to protect public funds and does not undermine the presumption of innocence until proven guilty.[782]

Universiti Utara Malaysia

The main reason for reversing the burden of proof to the accused is due to the numerous challenges and obstacles associated with the perspective of the burden of proof. These challenges were faced by the prosecution from a long time ago to the present, and the complexity of corrupt behaviour continues to grow.

[782] Mohannad Ahmad Abu-Morad, Zainal Amin Ayub, and Fauziah Mohammad Noor, "Burden of Proof and Presumption of Innocence in the Prosecution of Illicit Enrichment with Reference to the Jordanian Legislation," *Journal of Law, Policy and Globalization* 49 (2016).

Considering the fact that this issue has not been criminalised in Malaysia, further research is needed and necessary to discuss the topic regarding reverse onus provision in illicit enrichment prosecution in more detail if Malaysia decides to criminalise the said offence. This research only discussed the general discussion of the burden of proof and the presumption of innocence because its scope is limited to the issue of the inadequacy of Section 36. So, it is necessary to have further discussion to address the tension between the presumption of innocence, the reverse burden of proof, and the goal of effectively prosecuting illicit enrichment.

The punishment for public officers who possess unexplained wealth is provided under Section 36(3) of the MACCA. If a public officer is found guilty of illicit enrichment, they can face a maximum prison sentence of 20 years and a fine at least five times the value of the excess amount, if it can be determined, or MYR10,000, whichever is higher. Nevertheless, the prosecution is responsible for providing evidence to establish the offence, meaning they must prove the existence of the predicate offence. Simply possessing unexplained wealth or unjust enrichment is not necessarily a criminal offence. As a result, it has become challenging to prosecute corrupt public officers in criminal court since investigations must establish the origin and purpose of the assets handed to them. This could be a contributing factor to the lack of convictions under the aforementioned section since 2009.[783]

[783] Chin Chin Hong, "Reforming the System of Asset Declaration in Malaysia as a Strategy to Combat Corruption" (master's thesis, International Anti-Corruption Academy (IACA), 2016).

From a legal perspective, corruption is hard to prove due to several reasons, such as being victimless, having an uncooperative witness, not having enough evidence, etc. To simplify the complexity of proving that any advantage was provided in a corrupt manner, the legislation incorporates provisions regarding the presumption of corruption in the former Prevention of Corruption Act 1961, and subsequently in the Anti-Corruption Act 1997 and the current Malaysian Anti-Corruption Commission Act 2009 under Section 50 of the MACCA.[784]

4.1.7 The case under Section 36 is very limited, and there have been no reported cases of illicit enrichment by the court.

The lacuna in Section 36 has resulted in a limitation on cases under the said section. According to the Country Review Report of Malaysia by the United Nations Convention against Corruption in 2010 and 2011, there are no reported cases of illicit enrichment by the court, only an ongoing trial in the subordinate court in Malaysia.[785] The court reported six cases involving public officers under Section 36(3), which pertains to the failure to explain the excessive use of property, but only one of these cases resulted in prosecution. However, as of 2023, the case remains unreported, leaving no indication of a conviction or acquittal. The limitation of

[784] Rohana Abdul Rahman et al., "The Law on Presumption in Corruption Cases in Malaysia," *International Journal on Graft and Corruption Research* 2 (2014).
[785] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.

reported cases under Section 36[786] shows the ineffectiveness of Section 36 to prosecute the offenders of illicit enrichment in Malaysia.[787]

IE is not a very popular offence; hence, there are no issues with illicit enrichment, and MACC has not actually pursued Section 36 to date.[788] According to Respondent 8's perception and observation, some of the cases that MACC investigates and handles, including low-ranking officers who live a rich lifestyle, were not investigated under illicit enrichment crime because MACC is prosecuting for something else because MACC does not really pursue this section.[789] The prosecution is reluctant to define this offence since it is difficult to prove the illegal origin of the property gained through committing it. The issue of illicit enrichment is very limited in terms of cases, data, information, and investigation.[790] In fact, there is no case under Section 36 ever being brought before court.[791] There are not many reported cases under Section 36 before the court because this section is rarely used by MACC, and only one or two cases were handled, perhaps in 2010 or 2011.[792] Besides, no consideration to charge is also the reason why cases under Section 36 are limited; they are rarely discussed or tested in Malaysia, and mostly it depends on the

[786] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[787] Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020.
[788] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.
[789] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.
[790] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[791] Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020.
[792] Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019. & Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.

higher commission of the rank whether they can be proceeded with or not.[793] Respondent 3, in his experience as a former Deputy Public Prosecutor (DPP) for MACC, said that if there is not enough evidence, the DPP is not going to charge because the objective is solely dependent on the sufficiency of the evidence.[794]

As a matter of fact, there are very few cases involving illicit enrichment; hence, there are not many judicial precedents from previous cases or old cases that can be referred to as precedents in the law. From the experience of Respondent 7, MACC only refers to the old case as a precedent to the issue of illicit enrichment, such as ***PP v. Yuvaraj***[795] in 1969, because that is the only case from the highest court that is available in court and the only case reported to the judiciary. Malaysia must also examine and discuss other cases.[796] However, most cases of corruption (like taking and giving) and abuse of power are already so difficult to handle that MACC is not going into Section 36. On the other hand, it seems impossible to enforce the illicit enrichment crime because most of the IE cases were charged under Section 23 abuse of power. Respondent 8 agreed that both corruption and illicit enrichment are crimes related to Section 23 of the MACCA. Respondent 7 has handled a case similar to an illicit enrichment case, ***PP v. Mohd Noor bin Rejab***, which could potentially serve as

[793] Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019.
[794] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[795] 2 MLJ 89 PC
[796] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

a referral for an illicit enrichment case.[797] At the time, Mohd Noor was the Management and Development Services Sector Head at the Penang Education Department. He was accused of utilising his authority to secure an inducement by approving an RM26,162.50 payment voucher dated October 17, 2013. The voucher was for the supply of 'lab coats' for schools in the state to Syarikat Nur Ehsan Maju Enterprise, a company in which he has an interest. According to Section 23 of the MACCA, he was prosecuted. Mohd Noor was charged under Section 165 of the Penal Code with agreeing to accept an RM24,656 Maybank cheque on October 24, 2013, from a Maybank Jalan Penang Road Branch in Penang, where he was acquainted with the individual through his official duties.[798] He was found guilty of both charges. Basically, there is evidence showing that a sum of more than $26,000 was debited into his personal account. So, as a public officer, he was responsible for declaring it to the head of department if they received any property or valuable thing that was not their property.[799] So over the course of the incident, there was a period of approximately a few years from the date he received the money until the date of the charge, and there was no declaration when the prosecution checked his service declaration book record.[800] The prosecution argued that he agreed that he did not

[797] [2019] MLJU 1008 & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[798] [2019] MLJU 1008 & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020. & "Former Director in PM's Dept in Penang Gets Reduced Jail Term," *The Star*, April 2022, https://www.thestar.com.my/news/nation/2022/04/06/former-director-in-pm039s-dept-in-penang-gets-reduced-jail-term
[799] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020. & Regulation 10, Public Officers (Conduct & Discipline) Regulations 1993 and Service Circular No. 3 of 2002.
[800] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

have any declaration, but he denied it, and in his self-defence, he said that he forgot what it was. So, one of the factors that the court considered was his failure to declare the property and his intention to hide the excessiveness of the property acquired.[801] Why did the accused intend to hide the money if it was legal? There is an element of doubt when a public officer intends to hide the property obtained. This element of doubt can be used as a legal weapon by the prosecutor to attack a public officer who has the intention to hide their wealth.

In the event that an investigation of other offences fails to show results, charges under Section 36 of the MACCA are possible.[802] Despite the possibility of charges under Section 36, the chances of prevailing in court or charging the accused under this section are low due to various consequences, as seen in the case of ***PP v. Abdul Rahman Harun***,[803] a public officer and a former Penang Immigration director.[804] This is a test case under Section 36 of the MACCA by MACC Penang,[805] and he was charged with possessing assets in excess of his earnings/emolument.[806] The charges included the possession of funds amounting to RM681,355 and properties valued at RM136,000, indicating an excess of RM152,081 in relation to his current or prior emoluments and other relevant considerations. On October 11, 2010, Abdul Rahman

[801] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[802] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2016-2021.
[803] PP v Abdul Rahman Harun [2014] 7 CLJ 943.
[804] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019. & Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & "Perbicaraan Kes Bekas Pengarah Imigresen Ditetapkan 30 April," *M Star*, March 2012, https://www.mstar.com.my/lokal/semasa/2012/03/19/perbicaraan-kes-bekas-pengarah-imigresen-ditetapkan-30-april
[805] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[806] "Ex-Immigration Director gets New Defence Team," *The Star*, March 2012, https://www.thestar.com.my/news/nation/2012/03/20/eximmigration-director-gets-new-defence-team

faced allegations of failing to provide a sufficient explanation for the surplus in assets to the Malaysian Anti-Corruption Commission. He was prosecuted by Section 36(3) of the MACCA, which carries a maximum imprisonment of up to 20 years and a monetary penalty of at least five times the bribe sum or RM10,000, whichever is higher. This is the first such case in Malaysia, and the prosecution is carried out by Deputy Public Prosecutor Anthony Kevin Morais.[807] In this case, MACC used net worth analysis and forensic accounting to calculate the excessive wealth. It was analysed by a MACC HQ officer who has a specialisation in forensic accounting. Forensic accounting procedures are not provided under the law because it is a skill and process of how MACC justify a person's excessive wealth according to his official emolument in a practical way.[808] The main issue in this case that was raised by the defence council during the trial session was whether predicate offences had been successfully proven or not, because the result of the investigation of this case found that the prosecution could not prove any corrupt offences against the accused, but they still proceeded with this case under Section 36. Even though the prosecution initially established a prima facie case against Abdul Rahman,[809] the session court's final decision acquitted the defendant,[810] and the High Court rejected the forensic expert's testimony and evidence while upholding the session court's ruling. The

[807] "Former Penang Immigration Director Ordered to Enter Defence," *Borneo Post Online,* February 2012, https://www.theborneopost.com/2012/02/09/former-penang-immigration-director-ordered-to-enter-defence/
[808] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[809] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[810] "Former Penang Immigration Director Ordered to Enter Defence," *Borneo Post Online,* February 2012, https://www.theborneopost.com/2012/02/09/former-penang-immigration-director-ordered-to-enter-defence/

court of appeals also upholds the decision of the high court. So, the main consideration that was raised in this case is whether the predicate offence has been successfully proven or not.[811]

Besides, another reason for court acquittal in this case, as commented by Respondent 7, is that the investigation did not cover the whole thing because the prosecution did not include analysis of the claims and remuneration of the public officer, which are travel claims, transfer claims, and bonuses.[812] Because claims and bonuses from the government are not considered acts of corruption, the prosecution believes that this is not the product of corruption and that the decision to grant them or not rests with the government.[813] The judge believes that the respondent's remuneration and bonuses are legitimate financial sources, and forensic accountants should consider them during the analysis. The issuance of notice under Section 36(3) started with notice issued under Section 36(1) of the MACCA, where notice will be issued if the officer has a reasonable ground to believe that a property is acquired in connection with corrupt offences under the Act. The objective under Section 36(3) is clear: to identify whether the excessiveness of a public officer is not due to corrupt activities. Financial resources that are not the result of corrupt activities, such as bonuses and other remuneration, should be considered in the analysis of forensic experts as legal financial resources. These are the considerations and reasons why the High Court rejected a forensic expert's evidence. As commented by Respondent 7, if MACC can

[811] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[812] Ibid.
[813] PP v Abdul Rahman Harun [2014] 7 CLJ 943

do a proper investigation on section 36 cases, perhaps in the future, section 36's effectiveness will become more apparent. Thus far, the respondent has found it challenging for MACC to use Section 36. If MACC has other sections available, they will choose that option because it is simpler.[814] One of the reasons prosecutions do not use Section 36 is because the section itself is weak and has no ability to stand alone. The prosecutor can prove the excessiveness, but it can be rebutted. It is difficult to prove because, according to MACC experience in dealing with the issue of living beyond one's means, the excessiveness of wealth is determined by comparing the list of the declared property to the employee's emolument, and the difference is known as the figure. During the net worth analysis, MACC will analyse official expenditures, expenses, and other items, which is so difficult because there is no witness and only an expert from the forensic accounting department of MACC to show the excessiveness. Because it can be so subjective in some circumstances, it can be difficult to analyse someone's expenses and income. This makes it easier for the accused or suspect to justify and create excuses for excessiveness.[815]

Universiti Utara Malaysia

According to Respondent 2, another case similar to illicit enrichment is that of former Kuala Lumpur Criminal Investigation Department (CID) chief Senior Assistant Commissioner Datuk Ku Chin Wah. The Sessions Court discharged and acquitted him on a charge of not disclosing his sources of income, which amounted

[814] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[815] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.

to approximately RM1 million. By the end of the defence, the prosecution had failed to prove the case beyond a reasonable doubt. Ku Chin Wah faced charges for intentionally disregarding the notice given by the public prosecutor under Section 49(1) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 on December 23, 2013. This was due to his failure to declare his sources of income in a sworn statement dated January 8, 2014.[816] The judge said the defendant duly reported all of his income to the MACC in accordance with the legal requirements. According to Section 49(3) of the same law, the accusation carries a penalty of up to RM1 million, a one-year prison sentence, or both if proven guilty.[817] In 2018, the Court of Appeal affirmed the acquittal of Datuk Ku Chin Wah on a charge of failing to declare his source of earnings five years ago.[818] The Abdul Rahman Harun case and this one are similar.[819] The court acquitted both cases, which involved asset declaration issues. The acquitted cases demonstrated that it is impossible to prove the excessiveness of assets in the absence of a good and proper legal framework. The flaw in Section 36 lies in the fact that while the law exists, it remains nearly impossible to prove, making it ineffective.[820]

Universiti Utara Malaysia

[816] "Court of Appeal Affirms Ku Chin Wah's Acquittal," *The Sun Daily*, September 2018, https://www.thesundaily.my/archive/court-appeal-affirms-ku-chin-wahs-acquittal-KUARCH581036

[817] "Ku Chin Wah Acquitted of Graft Charge," *The Sun Daily*, May 2017, https://www.thesundaily.my/archive/ku-chin-wah-acquitted-graft-charge-ETARCH448318

[818] "Court of Appeal Affirms Ku Chin Wah's Acquittal," *The Sun Daily*, September 2018, https://www.thesundaily.my/archive/court-appeal-affirms-ku-chin-wahs-acquittal-KUARCH581036 & Bernama, "Court of Appeal affirms ex-CID chief Ku Chin Wah's acquittal," *Malay Mail*, September 2018, https://www.malaymail.com/news/malaysia/2018/09/28/court-of-appeal-affirms-ex-kl-cid-chief-ku-chin-wahs-acquittal/1677403

[819] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.

[820] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

The Adam Rosli case was another illicit enrichment case that was being investigated by Respondent 5.[821] During their investigation into his substantial wealth, the former PKR Ampang Youth chief, Datuk Adam Rosly Abdullah, was found guilty of providing false statements and presenting fake documents to the Malaysian Anti-Corruption Commission (MACC). The Court of Appeal judge decided to uphold the conviction and sentence of the sessions and high court in 2018 and dismissed his final appeal, and he was subsequently required to serve his prison sentence immediately.[822] He was charged with 2 offences under Section 32(8) of furnishing to an investigating officer statements that are false in material particulars; and 4 offences under Section 89 of the AMLATFPUAA of using documents to be produced or submitted under the provisions of the AMLATFPUAA that are wholly false with intent to deceive an investigating officer of the Malaysian Anti-Corruption Commission.[823] He was charged with all six charges and sentenced to six months of imprisonment and a fine of RM5,000.00 in default and one year of imprisonment in respect of each charge.[824] The false statements were related to his profession as an entrepreneur, his income, luxury vehicles, a bungalow acquired for RM1.2 million in cash, an RM200,000 loan from relatives, and an RM500,000 loan from an unauthorised loan provider. In relation to the remaining four charges, he allegedly

[821] Adam Rosly Abdullah V. PP [2020] 1 LNS 2384 & Hafiz Yatim, "After Appeal Fails, Ex-PKR Ampang Youth Chief Goes to Jail for Giving Fake Documents, Statements to MACC," *The Edge Markets,* March 2021, https://www.theedgemarkets.com/article/after-appeal-fails-expkr-ampang-youth-chief-goes-jail-giving-fake-documents-statements-macc & Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.
[822] Ibid.
[823] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.
[824] Adam Rosly Abdullah V. PP [2020] 1 LNS 2384

utilised counterfeit loan agreements from two individuals and two cash receipts from his company, Gegas Mentari Holding Sdn Bhd, to deceive the MACC investigators, which constitutes a breach of Section 89 of the same Act.[825] Adam claimed to have accumulated his wealth through businesses and family inheritance,[826] but it was proven otherwise. The defence counsel for Adam Rosly cannot prove or explain that the sources of the property were from legal sources. MACC started the investigation under Section 4 of the AMLA on where he got the money to buy the house. Because he claimed that he bought a house from the proceeds of illegal activities. After he declared all the assets, MACC found out that the asset declarations were false declarations, which are subject to Section 89 of the AMLA.[827]

In sentencing the accused, the learned Sessions Court Judge considered the following factors:

Universiti Utara Malaysia

(a) the need to consider the public interest in sentencing, including the effort to thwart money laundering and illegal activities.

(b) the need to strike a balance between the public interest and the interests of the accused;

[825] Hafiz Yatim, "After Appeal Fails, Ex-PKR Ampang Youth Chief Goes to Jail for Giving Fake Documents, Statements to MACC," *The Edge Markets,* March 2021, https://www.theedgemarkets.com/article/after-appeal-fails-expkr-ampang-youth-chief-goes-jail-giving-fake-documents-statements-macc

[826] Joseph Kaos Jr., "MACC Questions PKR Youth's Adam Rosli over His Wealth," *The Star*, February 2017, https://www.thestar.com.my/news/nation/2017/02/10/macc-queries-pkr-youth-chief-over-his-wealth/?src=ilaw

[827] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.

(c) the need for a deterrent sentence to be given to give a warning to would-be offenders; and

(d) the fact that the accused was a first-time offender and had no previous convictions.[828]

To conclude the issue of Adam Rosly, the prosecution can only prove that he made a false statement, but they were unable to prove the source of the money he used to buy the house or whether the property was obtained legally.[829] He is only punishable for the offence of giving a false statement but not for the offence of doing illegal or corrupt activities in possession of money and property. As a result, he received a lighter sentence, and up until this point, nobody knew where he got his money and property from.

One of the reasons why the sources of the property remain unknown is the absence of a solid and good legal framework. A 6-month period of imprisonment that was imposed on him is insufficient if it is determined that the property was acquired illegally. Upon his release from prison, he is capable of committing the same offences because there are insufficient laws and regulations to stop and prevent him from committing the same crime. It is challenging to justify if we only focus on Section 36 since you must refer to other related sections and compare them in light of

[828] Adam Rosly Abdullah V. PP [2020] 1 LNS 2384

[829] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.

recent and previous cases (reported and unreported) considering that cases on Section 36 are hardly found.[830]

Respondent 8 claimed that during those early years, MACC only investigated one case of illicit enrichment in Penang, but MACC lost the case.[831] As a result of Section 36's limitations, its restrictions cannot be seen because it is not being widely used. You will not discover its limitations until after you have used it for a while.[832] Respondent 7 also believes that MACC does not frequently apply or enforce Section 36 because there are other simpler options. Section 36's effectiveness or limitations can only be determined if it is fully implemented in the future.[833] Due to its rarely discussed nature and infrequent testing or use in practice, there are very few reported cases under Section 36.[834] The prosecutor rarely brings up or uses Section 36, which may result in no cases involving the IE issue at all. Since IE is a new issue, there have not been any IE-related convictions. Furthermore, because public officers are unfamiliar with Section 36 and unaware of it, the authority must find a mechanism to strengthen public awareness of illicit enrichment.[835] If public officers are not aware of this provision, they will not understand that living a luxurious life beyond their legitimate income is wrong and a crime. Raising awareness among public officers is

[830] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[831] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.
[832] Ibid.
[833] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[834] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020. & PP v Abdul Rahman Harun [2014] 7 CLJ 943
[835] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.

one of the initiatives made to prevent illicit enrichment crime in Malaysia. Since Section 36 is not used very often, there are not many cases reported, making it impossible to see the section's limitations. This is due to Section 36's weakness and the fact that other sections may be used as an alternative in the event of an IE problem. Implementation and enforcement of this section are lacking, and if it is often utilised, maybe we can see the problems and limitations.

Even for asset declaration, MACC is not venturing into this, even though sections 36 (1) and (b) are solely about declaring assets and property. So, even though the MACC Act does have a specific offence for illicit enrichment, it simply lies there like an unused tool because the MACC is still in the process of dealing with actual corruption. Illicit enrichment is the reason that public officers are taking in the bribery in the first place, but perhaps that is not how things are done and operated in Malaysia. Perhaps in 20 years, when our corruption rate has decreased, the MACC will take up this issue.[836]

4.1.8 Limited resources and no statistical data and literature review under Section 36 issue

The main challenge and limitation in conducting this research is the extremely limited amount of data and statistics on illicit enrichment. the resources addressing IE are limited and since IE issue is relatively new in Malaysia, many scholars do not

[836] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.

extensively discuss it. The data collected in accordance with Section 36 is also limited, and the information collected was insufficient to support the researcher's findings. The only resources accessible are international resources for illicit enrichment from other countries. Besides, Respondent 2 claims that because this section of MACCA is not actually enforceable, there is no statistic of public officers receiving notice under that section in the records,[837] nor is there a statistic from the investigation department that issued notice under that section. In fact, there is no specific number on the notice served by the Investigating Officer (IO) because the Commissioner must approve the notice before it can be given to a public officer if the Commissioner has reason to believe that the public officer held any property illegally. However, if the commissioner does not have any reasonable ground to believe, the said notice cannot be served to the public officer, as mentioned under Section 36(1) of the MACCA. Then the IO must first present the proposed notice to the commissioner before proceeding to serve it on anyone they suspect to be living beyond their means.[838] However, because MACC lacks a system to segregate the information of public officers living beyond their means, there is no data on public officers involved in illicit enrichment.[839]

Universiti Utara Malaysia

[837] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[838] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[839] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.

4.1.9 An investigation under Section 36 can only be triggered when there is a report of corruption, misuse of power, or any related offences under Malaysian legislation.

According to the literature review in Chapter 1, there are an increasing number of cases of corrupt public officers living a lavish lifestyle, enjoying wealth through illegal means, and enjoying the proceeds of their corrupt activities. In these situations, an investigation can only be triggered when there is a report and evidence of corruption, fraud, or misuse of power. Cases of illicit enrichment depend largely on public complaints or allegations made by reporting institutions as required by anti-money laundering laws in compliance with the AMLATFAPUAA made directly to the law enforcement agencies like the MACC, the Royal Malaysian Police, or the Inland Revenue Board for investigations under offences of unexplained assets, money-laundering, or a public officer's involvement in businesses or abuse of positions for his own or relatives' benefit.[840] There are no witnesses to testify that the accused gained the wealth through illicit means when there has been no complaint made to the MACC specifically about living beyond means. In Section 36 cases, the MACC officer frequently files a report or complaint. However, it might be the biggest challenge with regard to this issue.[841]

[840] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2016-2021, 158.
[841] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

Normally, the whistleblowers will complain to MACC about specific individuals who live a luxurious life. There are various ways to lead a luxurious life, and MACC will conduct an investigation based on the complaint. The result of the investigation will determine whether that individual really owned wealthy assets and whether those assets were from unknown sources, and the MACC will issue the accused a notice under Section 36 requiring him to provide an explanation of the sources of his assets and wealth.[842] For example, an officer is investigating Mr. A for living beyond his means. Only after investigating Mr A. then only the officer is authorised to issue a notice under Section 36. Even if MACC knows about Mr. A's excessive wealth, it cannot contact him directly without conducting an inquiry into him. MACC can only then implement Section 36.[843] This matter has been further explained under the subtopic mentioned above.

The MACC also urged the public to report public officers living beyond their means immediately. According to Datuk Mohd Azam Baki, the previous deputy chief commissioner (operations) of MACC, public officers who lead extravagant lives often have certain positions in the government and are likely involved in abusing their power and engaging in corrupt activities. MACC will examine how they are able to afford such expensive items and determine if their wealth was obtained legally. The MACC conducted an observation of high-ranking officers, which

[842] Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019. & Section 36 of MACC Act 2009.
[843] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.

included their asset acquisitions. Mohd Azam further said that retired public officers who were found to have abused their power during their service could be subject to punishment. MACC is currently examining the situation of a former senior government official who authorised a project for a private company while in office. Furthermore, the intelligence unit of the MACC also monitors cases of corruption involving senior public officers.[844]

4.1.10 Challenges during investigation: evidence and witnesses

Living beyond means first existed as an offence in dealing with corrupt public officers when there was an absence of direct evidence of bribery against them.[845] The offence of illicit enrichment by public officers is an offence that represents the accumulated proceeds of corruption crimes that have been committed secretly during the term of service.[846]

Universiti Utara Malaysia

The fact that corruption is 'a secret offence' is one of its distinguishing features, so most of the time, the main witnesses in a crime are the ones who actually committed the act. Therefore, the information is kept confidential among the parties involved in the crime, and there is no specific victim who may disclose or report it to the relevant

[844] "MACC: Report Civil Servants Living Beyond Their Means," *The Star*, August 2017, https://www.thestar.com.my/news/nation/2017/08/09/report-civil-servants-living-beyond-their-means-says-macc-deputy-chief/

[845] Akhbar Satar, *Corruption And Crime in Malaysia: Perception or Reality?*, 1st ed. (Kuala Lumpur: Akhbar & Associates, 2018), 31.

[846] Alexandra Habershon and Stephanie E. Trapnell, *Public Office, Private Interests: Accountability through Income and Asset Disclosure.* (Washington, D.C.: Stolen Asset Recovery (StAR) & World Bank Publications, 2012).

authorities. Therefore, the biggest challenge in detecting and prosecuting corruption is the gathering of evidence.[847]

Evidence is a very crucial element in corruption crimes, and evidence is obtained from a witness or complainant relating to the case. However, the complainant or whistleblower typically refuses to complain or has a problem to complain about.[848] In accordance with Malaysia's Witness Protection Act 2009 (Act 696), a witness and their family members are provided with protection as determined by a threat assessment. The Act also extends to affected parties and other individuals who may require protection or assistance under the programme. Besides, the Whistleblower Protection Act 2010 (Act 711) in sections 7–10 "*grants confidentiality of information, immunity from civil and criminal action, and protection against detrimental action, such as termination of contracts or withholding of payments to whistleblowers and any related or associated persons, even if the disclosure does not lead to any disciplinary action or prosecution."*[849] Despite the whistleblower protection Acts,[850] there are still obstacles in the form of people who are hesitant to come forward and expose themselves. So, the whistleblower is somewhat concerned that his identity will be revealed at the end of the day.[851] Another reason why

[847] Mesay Tsegaye Meskele, "The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law," (master's thesis, Faculty of Law, University of the Western Cape, South Africa, 2012), 31.
[848] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[849] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[850] Whistleblower Protection Act 2010 (Act 711)
[851] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.

witnesses are reluctant to testify in court is that, despite the fact that Section 52 of the MACCA provides that testimony from those involved in a bribery transaction cannot be considered as an accomplice, in practice the court sees such testimony as an accomplice, and the court finds it difficult to believe the testimony given by them.[852] This court practice is in contrast with Section 52 of the MACCA, where it states that "*no witness shall be regarded as an accomplice by reason only of such witness having accepted, received, obtained, solicited, agreed to accept or receive, or attempted to obtain any gratification from any individual, or any written statement provided to an agent provocateur shall be considered admissible as evidence during the agent provocateur's trial*."[853] Therefore, MACC faces significant challenges in preventing corruption, particularly in securing the cooperation of witnesses[854] who often avoid giving testimony due to their involvement in corrupt activities. Witnesses are the most important evidence in corruption and IE cases. Corruption happens in two ways, in two transactions involving the giver and the taker. The witnesses are less cooperative with MACC in providing information because they have a hidden agenda and motive, as well as an interest in corrupt offences.[855] This situation led to the low conviction rate, and it was explained that this could be attributed to a misappreciation of the law and facts by the trial judge and would be subject to

[852] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[853] Malaysian Anti-Corruption Commission Act 2009 [Act 694].
[854] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020. & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[855] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

appeal, witnesses for the prosecution having proved to be hostile or reluctant to give evidence in court, and witnesses who could not be traced before and during the trial. The majority of the investigations are still in progress. Some of the investigations have resulted in non-criminal penalties such as disciplinary actions, and some have resulted in no legal consequences due to insufficient evidence, including uncooperative or untraceable witnesses.[856] The fight against corruption is very challenging because it involves dealing with people who are likely highly intelligent, well-informed, and influential. Therefore, those engaged in anti-corruption efforts must demonstrate high expertise and competency in their roles.[857] The MACC must ensure that its workers are professionals with diverse responsibilities.

Even though it can be challenging to gather evidence from a witness, it is simple to get evidence from a bank or other financial institution because there is a special provision for doing so. As stated in Section 36(1)(c) of the MACCA, the mechanism to get evidence, gather information, and conduct an investigation is simple. MACC does not have to visit the Central Bank or Bank Negara; if DPP simply signs it, the bank will comply with the order.[858] Bank secrecy restrictions are not a challenge to the investigation and seizure of bank, financial, and commercial records, according to the Bankers' Books (Evidence) Act 1949 (Act 33), the Financial services Act

[856] International Affairs Division Attorney General Chambers Malaysia, *Country Review Report of Malaysia*, 2013. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[857] Tony Kwok Man-wai, 'Effective Measures to Combat Corruption in Hong Kong,' *19th UNAFEI UNCAC Training Programme Visiting Experts' Papers Resource Material Series No.101* (2017).
[858] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.

2013, Section 35[859] of the MACCA, and Sections 20[860] and 48-50[861] of AMLATFAPUAA.[862]

So basically, the availability of evidence and testimony by the witness is one of the main challenges and limitations of IE crime. In referring to Abdul Rahman Harun's case,[863] which was previously discussed in subtopics 4.1.5 and 4.1.7, based on Respondent 7's experience in handling this case, the investigation officer solely depends on the documental evidence to show that there is a surplus or excessive amount of property. However, there is no direct evidence demonstrating the acquisition of the property through illegal means.[864] It is impossible to meet the requirements of Section 36 if there is no witness who can affirmatively testify that an excessive amount of property is derived from illegal sources that are prohibited by this Act.[865]

Universiti Utara Malaysia

Furthermore, corrupt and dishonest public officers in positions of authority can intimidate potential witnesses from testifying against them or distort documentary evidence. Witnesses could also pass away or depart. These situations make it

[859] Section 35: Investigation of share, purchase account, etc.
[860] Section 20: Secrecy obligations overridden.
[861] Section 48: Investigation powers in relation to a financial institution, Section 49: Public Prosecutor's powers to obtain information & Section 50: Seizure of movable property in financial institution.
[862] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[863] PP v Abdul Rahman Harun [2014] 7 CLJ 943
[864] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[865] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

challenging to gather direct evidence to prove corruption offences and complicate the detection, investigation, and prosecution of corruption offences.[866]

Another example of evidence and witness limitations involves Respondent 6's investigation and raid of a case involving a public officer with grade 54, a Youth and Sports Ministry official, Otman Arsahd, who was living beyond his means in 2016.[867] A 56-year-old senior executive was accused of having accepted illegal payments equivalent to RM20 million and enjoying a luxurious lifestyle.[868] He faced charges at the Kuala Lumpur Sessions Court for 32 counts of embezzling government funds and falsifying documents involving almost RM40 million. Fifteen charges were made under Section 23 of the MACC Act 2009 while another seventeen charges under Section 18 (a) of the same Act.[869] The accused pleaded not guilty to the charges and claimed trial.[870] Otman had allegedly abused his position to direct subordinates to make payments to a company owned by his son. He was also charged with directing payments to four companies for jobs that do not exist, at the National Sports Council office between May 2, 2012, and November 18, 2015,

Universiti Utara Malaysia

[866] See, for example, Article 20 of UNCAC, Article 8(1) of the AU Convention and Article IX(1) of the OAS Convention

[867] Othman bin Arsahd v Pendakwa Raya [2019] MLJU 1333 & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020

[868] "RM100m Pocketed in Small Amounts, reveals 'Nothing to Hide' Minister," *Malaysia Kini*, March 2016, https://www.malaysiakini.com/news/334662

[869] "Youth and Sports Official Charged by MACC for Misappropriating Govt Funds," *Astro Awani*, March 2016, https://www.astroawani.com/berita-malaysia/youth-and-sports-official-charged-macc-misappropriating-govt-funds-100612

[870] "Youth and Sports Official Charged by MACC for Misappropriating Govt Funds," *Astro Awani*, March 2016, https://www.astroawani.com/berita-malaysia/youth-and-sports-official-charged-macc-misappropriating-govt-funds-100612 & Shanti Gunaratnam, "Ex-Youth and Sports Ministry Secretary, 3 Directors Charged with Money Laundering," *The News Straits Times,* April 2016, https://www.nst.com.my/news/2016/04/140654/ex-youth-and-sports-ministry-secretary-3-directors-charged-money-laundering

and[871] he reportedly laundered a sum of RM16,623,000 from March 2012 to December 2015.[872] There is a suspicion that they have a connection with a syndicate that is involved in the embezzlement of government funds. This group has been around since 2010 and allegedly created fictitious projects, directing monetary payments to a contractor through the division secretary. The MACC seized 69 bank accounts amounting to RM8.33 million and confiscated homes, vehicles, clothing, and jewellery. Furthermore, confiscated items included high-value watches with an approximate value of RM400,000 Hermes bags with an estimated value of RM600,000 and bedding with an estimated value of RM300,000. The mastermind also frequently travelled with his family members using first-class tickets valued at RM80,000 per individual.[873] The prosecution witness in this case claimed that the accused also did a renovation and upgrade of his bungalow in Kajang, amounting to more than $1 million, and the witness also presented eight investment books of Amanah Saham Bumiputera that belonged to the accused, his wife, and his two children, which totalled more than $2 million.[874] The challenge during this investigation includes missing documents, where the documentation involved was claimed to be missing, and, in his defence, the accused

Universiti Utara Malaysia

[871] "Youth and Sports Official Charged by MACC for Misappropriating Govt Funds," *Astro Awani*, March 2016, https://www.astroawani.com/berita-malaysia/youth-and-sports-official-charged-macc-misappropriating-govt-funds-100612

[872] Shanti Gunaratnam, "Ex-Youth and Sports Ministry secretary, 3 directors charged with money laundering," *The News Straits Times,* April 2016, https://www.nst.com.my/news/2016/04/140654/ex-youth-and-sports-ministry-secretary-3-directors-charged-money-laundering

[873] "RM100m Pocketed in Small Amounts, reveals 'Nothing to Hide' Minister," *Malaysia Kini*, March 2016, https://www.malaysiakini.com/news/334662

[874] Shanti Gunaratnam, "Ex-Youth and Sports Ministry secretary, 3 directors charged with money laundering," *The News Straits Times,* April 2016, https://www.nst.com.my/news/2016/04/140654/ex-youth-and-sports-ministry-secretary-3-directors-charged-money-laundering

justified that the sources of the money came from a loan, and then they created a mutual agreement with a third party to prove their claim. In addition to the other limitations, it is hard and challenging to get cooperation from his accomplice or anyone connected to or involved in the illegal activities.[875] As of May 2019, the case is still at the prosecution witness trial. No judgements have been reported so far by the court.[876] Few factors have to be taken into account and considered in calculating the money and property of the accused, such as his previous expenses (recorded and unrecorded), income, and other expenditures (documented and maybe by cash), which the accused would not have remembered, before the prosecution can tackle the case, where that is the main problem. So, in order to conduct an effective investigation, MACC will have an approach where they will ask the accused to declare the property and validate it.[877] Asset declaration also plays an important role in determining the excessiveness of the accused's property, and since there is no proper law on asset declaration and Section 36, so many cases are pending and challenges in terms of evidence and witnesses cannot be overcome due to the inadequacy of the said law, especially crimes that were committed secretly as 'a secret offence'.

Universiti Utara Malaysia

[875] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[876] "Bekas Pegawai Kanan KBS Gagal Ketepi Hakim Dengar Kesnya," *Sinar Harian*, April 2019, https://www.sinarharian.com.my/article/21952/berita/mahkamah/bekas-pegawai-kanan-kbs-gagal-ketepi-hakim-dengar-kesnya
[877] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.

This provision would be very beneficial, as corruption is sometimes seen as a covert agreement between consenting adults. If there is further strong independent and supporting evidence, both the person giving and receiving the bribe could be charged. Plea-bargaining was incorporated into the Criminal Procedure Code of Malaysia, effective June 1, 2012. This facility would allow co-offenders to collaborate in prosecuting bribery charges.[878] Since corruption is committed secretly, it is considered a silent crime, so most cases of corruption are victimless, and the blame cannot be pointed to a public officer alone because the one who plays a major role in corrupt transactions is the giver. The receiver can resist the temptation to accept bribery for the first time, but if he has offered it many times, The temptation to accept bribery is high, and the person who started the bribery is usually the giver and usually the public, not public officers.

Universiti Utara Malaysia

In essence, corruption is a two-way street. If there are no givers, there will not be any takers. But if you refuse to surrender, things appear to proceed either very slowly or not at all. The major problem with corruption is that you cannot hold both the giver and the taker accountable. We need to wipe out the giver more seriously than the taker,[879] because there will not be any takers if there are no givers. However, if the giver does not give, things seem to move slowly or not at all. If both the giver and

[878] Amir Nasruddin, "Best Practices in Anti-Corruption: A Decade of Institutional and Practical Development in Southeast Asia" (n.d.): 131–137.
[879] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020. & Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.

receiver are accused, no one would want to testify in court.[880] The respondent encountered a case in which both the giver and the taker served as the accused and witnesses; however, the court dismissed the case due to the conflicting testimony of both witnesses.[881] The only case where both the giver and the taker were charged is the Ku Nan case,[882] where they used Section 165 of the penal code, as it was difficult for MACC to prove under the MACC Act 2009 because in order to prove the offence under MACCA, it would have required consideration into that particular corrupt transaction.[883] Ku Nan, being a public servant, to wit, the Minister for Federal Territories, accepted for himself a valuable thing without consideration, the sum of RM2,000,000.00 from one Chai Kim Kong by way of a Hong Leong Islamic Bank cheque belonging to Aset Kayamas Sdn. Bhd. that was deposited into CIMB Bank belonging to Tadmansori Holding Sdn. Bhd. in which he had an interest when he knew that Aset Kayamas Sdn. Bhd. had a connection with his official function, and Ku Nan thereby committed an offence punishable under Section 165 of the Penal Code. He was charged before the Kuala Lumpur High Court, found guilty, and convicted. The court sentenced him to 12 months of imprisonment, a fine of RM2,000,000.00, and six (6) months of imprisonment in default. The appellant then appealed against the conviction and sentence. In the judgement of the Court of Appeal, the judges, however, allowed the appeal and set aside the conviction and

[880] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020. & Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[881] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[882] Tengku Adnan Bin Tengku Mansor V Public Prosecutor [2021] MLJU 2200
[883] Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020.

sentence imposed on the appellant by the High Court. The appellant, Datuk Seri Tengku Adnan Tengku Mansor, was hereby acquitted and discharged over a RM2 million graft charge and 12-month jail sentence.[884] This is one of the challenges during an investigation into a corruption case in which it would be difficult or impossible to charge both the giver and the taker. The two parties involved in a corrupt transaction are called "dualism"[885] and the concept of 'dualism' is evident in a corrupt transaction. In every case, there is an official and an unofficial procedure, and in almost every official activity, there is dualism.[886]

Besides, for instance, if you observe a situation at the land office where it will take several years to transfer a land title, bribery culture was developed solely to speed up the process. In referring to the discussion in the literature review on the legal issues and implications of corruption under Chapter 1, the case example of ***Mohammad Hafez bin Mohd Azmi v. Public Prosecutor (SPRM)***[887] showed that the situation in the Malaysian public sector is that people often give or receive bribery to speed things up. So, because of our expertise and the fact that it depends on the case, the prosecution will not charge both the giver and the receiver. The prosecution is quite unlikely to file charges against the giver and the receiver. They may observe the relationship between the two parties in a conversation and text messages as evidence.

[884] Rahmat Khairulrijal, "Ku Nan Freed of Corruption Conviction," *The New Straits Times*, 2021, https://www.nst.com.my/news/crime-courts/2021/07/708805/ku-nan-freed-corruption-conviction.
[885] The term 'dualism' is called by General Nasution in his written address to the Conference of Muslim Students in North Sumatra on 26 August 1967. Cited by Hussein, Alatas Syed. "The Sociology of Corruption: The Nature, Function, Causes and Prevention of Corruption." (1968). Times Books International
[886] Syed Hussein Alatas, *The Sociology of Corruption: The Nature, Function, Causes and Prevention of Corruption* (Times Books International, 1968), and please refer to Chapter 2, Subtopic 2.4, on page 116 for further explanation of the concept of dualism.
[887] [2013] 7 MLJ 585

However, it can be difficult to show the factum of payment, especially when using cash.[888] According to Respondent 4's experience, if it includes commercial crime matters, you can show the money entering the account in the form of a payment or something else to indicate that there has been a payment. So, in order to prove corruption, you must show that it occurred. For prosecution, the fact of payment is more important than simply entering money. Was it offered corruptly? And for what reason do you require evidence? MACC must prove that the money was given on a purpose and in a favour, and the prosecution does not charge the case under corruption law because it is difficult, and those are the challenges.

Technically speaking, the mechanism is clear, and there is a presumption. However, it is quite a challenge to prove that it was done corruptly,[889] and the process of getting strong evidence and the unwillingness of a witness to testify against the accused make it difficult to prove.[890]

Universiti Utara Malaysia

Detecting corruption is, arguably, the biggest challenge governments face in their fight against it. Corrupt activity is "notoriously difficult" to identify because of its inherently illicit nature, where usually two or more perpetrators enter into a secret agreement.[891] Law-enforcement officials frequently find corruption detection and investigation nearly impossible because none of the direct participants in the corrupt

[888] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[889] Ibid.
[890] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[891] Hongbin Cai, Hanming Fang, and Lixin Colin Xu, "Eat, Drink, Firms, Government: An Investigation of Corruption from the Entertainment and Travel Costs of Chinese Firms," *The Journal of Law and Economics* 54, no. 1 (2011).

activity wishes for the crime to be detected.[892] Corruption has earned the reputation of being "certainly one of the most challenging crimes to investigate and prosecute successfully."[893]

4.1.11 Challenges during investigation: challenges to investigating high-profile individuals.

One of the reasons Malaysia needs a specific law on IE is to address and overcome the difficulties MACC encounters when investigating high-profile individuals, particularly those who are involved in illicit enrichment crimes. IE crime does not only involve low-ranking public officers but also involves high-ranking officials and high-profile politicians. A competent IE law will act as a watchdog for these high-ranking politicians, preventing them from abusing their power and accumulating illicit wealth without being caught. Investigating high-profile individuals can be difficult since they often have links to politicians, powerful people, or those who have connections with higher authority. Since their job as investigation officers requires them to investigate and evaluate allegations of wrongdoing, there will be issues if the officers start investigating since they must have the details of the individual to begin their investigation. One concern is whether the officers will investigate once they are aware of the accused's status. In these situations, they must ensure that the leaders in their organisations are concerned, stand behind them, or

[892] Jeffrey R. Boles, "Criminalizing the Problem of Unexplained Wealth: Illicit Enrichment Offenses and Human Rights Violations," *Legislation and Public Policy* 17, no. 835 (2014).
[893] Ibid.

provide them with better protection.[894] One incident happened in April 2013, when Customs Deputy General (Customs and Internal Tax) Datuk Shaharuddin Ibrahim was shot dead by two men on a motorcycle as he was travelling to work in Putrajaya.[895] The 58-year-old Shaharuddin was in the front passenger seat of a four-wheel-drive vehicle when two men on a motorcycle pulled up alongside him at 8.20 a.m. as the vehicle stopped at a traffic light. That was when the pillion rider fired the three shots. His son, Akhtar Shaharuddin, told The Malaysian Insider that he believes his father's death was linked to a car-smuggling syndicate based on the duty-free island of Langkawi in Kedah, and they must be held responsible for his death.[896] Although a suspect was arrested in connection with the assassination, until 2022,[897] no one has been charged with his murder.[898] Will he get justice in this case?

The safety of investigation officers is at risk when they investigate a high-profile case or an illegal group syndicate. Investigations officers need to act with intelligence and tact, conducting research on the high-profile individual under investigation in a manner that guarantees their safety. Moreover, they can conduct the entire investigation process with strict confidentiality. New guidelines must be implemented by the competent authority and the government to further strengthen

[894] Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020.
[895] Kalbana Perimbanayagam, "Main Suspect in Customs Deputy Director-General, Nabbed," *The New Straits Times*, July 2014, https://www.nst.com.my/news/2015/09/main-suspect-customs-deputy-director-general-nabbed
[896] Charles Ramendran, "Paying with His Life for Upholding The Law," *The Sun Daily*, September 2020, https://www.thesundaily.my/true-crimes/paying-with-his-life-for-upholding-the-lawJD4252685
[897] Free Malaysian (@FreeMsian), Twitter, August 22, 2022, 12:50 p.m., https://twitter.com/freemsian/status/1561576580949823489
[898] "Recent Murders of Government Officials," *The Star*, September 2015, https://www.thestar.com.my/news/nation/2015/09/18/recent-murders-of-govt-officials/?style=biz.

the Standard of Procedures on security standards for senior officers or those officers with high-risk duty. Nobody wants these officers to lose their lives while upholding the law. Essentially, the real challenge lies in instructing MACC officers on how to tactfully investigate these individuals to ensure their safety and protection. Furthermore, the MACC's enforcement unit and income tax officers must collaborate to conduct investigations, and the MACC must bring income tax officers with them when they investigate people who are living beyond their means. Because tax officers are the competent authority that has all access to the accused's reports and records, including information on their tax payments, income, and the reason why he is living beyond means by driving luxurious cars, etc.[899]

Aside from the safety of investigation officers, another related issue is the challenge of prosecuting high-profile individuals. During prosecution, they will be supported by skilled lawyers, and such defendants can obstruct the prosecution with lengthy appeals, and sometimes they even manage to influence the legislative bodies to amend legal provisions in their favour. Prominent defendants also benefit from the support of the public, which often displays sympathy for "successful" businessmen or politicians. Therefore, most of the difficulties must be addressed at the legislative level. There are also certain rules and practices that need to be applied at a technical and personal level by prosecutors. These rules and practices may help to control and diminish the negative effects of corruption and render the prosecution of corrupt

[899] Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020.

individuals in powerful positions more effective.[900] Thus, in addition to legal reforms, certain strategies and guidelines followed by prosecutors can contribute to the successful prosecution of corruption cases involving high-profile individuals.

Corruption is about power, and the powerful will always find ways to avoid being caught. The powerful, involving high-ranking officials, high-profile politicians, and top management's people who get involved in corruption crimes, know how to deal with and escape, and it is always harder to prove their crimes. This is why integrity is important in our way of life.[901]

4.1.12 Challenges during investigation: It is challenging to prove Section 36 because it involves forensic accounting and requires meticulous calculation by an expert.

Section 36, which requires forensic accounting, is another main challenge faced by MACC in order to prove that the money came from corrupt or illegal proceeds.[902] The entire calculation process requires skills and expertise in analysis. It is not a simple calculation because MACC must analyse it itself. When Respondent 6 asks someone to declare his property, he will only declare an estimate of that property because the expenditures will involve two things; property with documentary

[900] ADB-OECD Anti-Corruption Initiative for Asia-Pacific Combating Corruption in the New Millennium, "Effective Prosecution of Corruption," 2003. https://read.oecdilibrary.org/governance/effective-prosecution-of corruption_9789264041394-en#page1.

[901] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020. & Mohd Sidek Hassan, "EAIC Committed to Addressing Integrity Issues, Challenges, says Chairman," *The Star*, March 2023, https://www.thestar.com.my/news/nation/2023/03/21/eaic-committed-to-addressing-integrity-issues-challenges-says-chairman

[902] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.

evidence (which appears or reflects in the bank statement and can be tracked) and undocumented evidence, which is cash. Cash transactions are not recorded naturally because most people do not remember all the transactions involving cash money, so they are generally not recorded unless they have receipts. Additionally, there is no documentation or evidence to support cash transactions. That is the real challenge because it is very complicated, especially account calculation, and it is subjective when involving facts as well. In fact, it is time-consuming for the prosecution to find and discover all of that relevant information.[903]

Besides, it seems impossible to recall your most recent five years of expenditure and income, unless they are recorded and you have them in your bank statement and converted them into assets.[904] During the investigation process under Section 36, the MACC will send it to these financial forensic types of people (whose backgrounds would be within actuary, a person who compiles and analyses statistics and uses them to calculate financial related matters),[905] and they will come out with their findings report from the accused's day 1 of working until the day he is arrested or started being investigated. MACC will list down all of his salaries, sources of income, other availability, and sources[906] and then discover all of his commitments

[903] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[904] Ibid.
[905] "The Definition of Actuary," *Cambridge Dictionary*, https://dictionary.cambridge.org/dictionary/english/actuary (accessed January 8, 2022).
[906] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.

and stuff, which is a very complicated and meticulous time-consuming kind of mathematics.[907] MACC can see the pattern in which he holds the money, as well as what the transaction entails.[908] Then, MACC will come to the conclusion that his income is excessive and that their savings exceed their income, which is more than they actually earn. Where did the accused get the extra money, and how is he going to defend himself? It will be challenging to provide an adequate defence for this offence, which is hard to prove.[909] However, the accused will deny it. Hence, how will the prosecution prove it?

DPP can show a prima facie case that a public officer is living beyond means and utilising that money. But the problem is that it can be easily rebutted. The DPP can show the judge how he can access the property. It is easier to be rebutted because the law allows you to consider the circumstances. As can be seen in Section 36, DPP will open another investigation under Section 36 when the investigation concerns the use of Section 36. The challenge is that if the accused is charged under Sections 16 or 17 of the MACCA, it is easier to prove because it is obvious to the court that he was involved in corrupt activities. Unlike in Section 36, the prosecution must conduct further investigation even if they recognise the pattern of money deposited into a bank account, among other things. The reported case under Section 36 required the

[907] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[908] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[909] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.

forensic team to produce evidence, a process that took nearly a year to complete. The burden of proof in a prima facie case is higher. When the DPP specifically mentions excessiveness in that charge, he must prove it in forensic accounting. However, if the defendant rebuts the total amount of assets, considers his other official emoluments and other items, and justifies his assets as being only ten thousand, the prosecution is no longer able to prove otherwise.[910] This is a typical situation involving Section 36. During a prosecution, public prosecutors base their charges on available evidence. However, the lawyer or even the accused can write a letter, known as a representation, to the AG chambers. When they send these kinds of letters, the AG may occasionally drop the charges without explanation. Article 145(3)[911] of the Federal Constitution provides wide discretionary powers to the AG, to either prosecute or not prosecute a case. These powers seem to be absolute and cannot be questioned in any court of law. However, in more recent times, the courts are questioning the AG's wide scope of powers.[912] Raja Tun Azlan Shah, then Chief Justice of the High Court of Malaya held[913] that "*every legal power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal*

[910] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[911] Article 145 (3): The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial.
[912] Aira Nur Ariana Azhari and Lim Wei Jiet, *Separating the Attorney-General and Public Prosecutor: Enhancing Rule of Law in Malaysia : Problems Surrounding the Position of the Attorney General.*, 2016.
[913] In the case of Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1978] 1 MLRA 132.

*restraint; where it is wrongly exercised, it becomes the duty of the court to intervene. The courts had the right to intervene and that there should be limitations to the AG's powers. In this case, the AG's discretion to prosecute or not prosecute can be questioned in the courts*."

Respondent 8 was handling a case where a police officer had some surplus cash but still wrote a letter of representation. The AG withdrew the case for reasons they did not disclose to Respondent 8. These reasons may have been humanitarian in nature or for other purposes.[914] In my opinion, there should be limits on the AG's powers. The process of prosecuting the accused, who has excessive money and property, will be interrupted when the AG has the power to drop charges on issues related to this. What if the accused is really guilty? The AG cannot dismiss charges without strong evidence. The process seems biassed towards the MACC officers and prosecutions because the MACC officers spent a lot of time and energy proving the excessiveness, but it appears that the Attorney General rejected their request. Additionally, this process may hinder the MACC officer's ability to establish guilt and the DPP's capacity to charge the accused with overreaching under Section 36. It is best to forbid and steer clear of the entire representation letter writing process, and efforts should be made to ensure that the prosecution of the case is conducted in a transparent and truthful way throughout the entire process.

[914] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.

4.1.13 Beneficial ownership issue or proxy

The other limitation to the issue of corruption and illicit enrichment in Malaysia is the use of third parties or beneficial ownership, which serves as a proxy for the offenders.[915] Public officers typically hide their assets by registering them under the name of an unrelated individual, a proxy, or beneficial ownership.[916] The similar term for proxy or beneficial ownership was defined under Section 3 of the MACCA as relative and associate. Relative includes spouse, brother or sister, uncle, or aunt, etc., who have a relation to a person; associate means any person who is a nominee or an employee of such person; or any person who manages the affairs of such person, or any organisation and any corporation within the meaning of the Companies Act 1965 [*Act 125*].

Universiti Utara Malaysia

According to Respondent 8, even if there was an illicit enrichment law, it would only serve as a barking dog and not be able to prevent the crime because offenders would use proxy names rather than their own names to obtain illegal wealth[917] because this is the only solution to having illegal wealth. Modernisation has made the case of illicit enrichment highly complex, and the manner in which it was done is even more so, especially when it involves proxies or other third parties who were used to

[915] Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020 & Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[916] Guillermo Jorge, *The Romanian Legal Framework on Illicit Enrichment* (Washington, DC.,2007), 13.
[917] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020. & Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.

conceal their illegal wealth.[918] It is challenging to identify the true beneficial owner[919] of the property due to the involvement of the accused as well as their children and wives.[920] If MACC finds out that in their investigation that he has a proxy, MACC will serve notice under Section 36(1) to the proxy.[921] However, proxy and third parties make corruption hard to prove. The investigation by the prosecutor must go further and prove that this is illicit enrichment,[922] and proxies are rarely prosecuted.[923] The culprit can still enjoy the assets under proxy names.

Furthermore, there are other limitations on the mechanism or medium that MACC can use to trace proxy, for instance, how to distinguish between proxy and bona fide friends. For example, in land transfers, there is a term for either consideration or love and affection. How, then, do you justify such issues? If your friend gives you RM10,000, it is enrichment, but it is not illicit because it was given to you as a gift. Unless we want to prove how his friend got the money, what happens if his acquaintance works as a public officer? How can you make him disclose his assets? The same situation occurs if the property is in the wife's name. Because it is impossible to establish an official relationship between the giver and the public

Universiti Utara Malaysia

[918] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[919] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020 & Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[920] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[921] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020
[922] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[923] Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020 & Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.

officer's wife, even if they are married. There used to be one case under Section 165 of the Penal Code where the giver did not give it directly to the public officer, but instead he made the gift in the name of the public officer's wife. It is possible to take judicial notice that there is a marriage in a situation where the court will not rule that there is no official relationship, but marriage is not necessarily further up the official relationship. However, marriage is official in the sense that it is an official duty. Therefore, even if a public officer does not receive a single cent from the exercise of his power and the profit goes to his allies, which could include friends, siblings, and other family members, it is still considered an abuse of power. Because typically, they will claim they did not receive any benefits. For instance, in the case of Datuk Dr. Awang Adek,[924] it can be observed that he transferred all the money to his DUN. He claimed that since the expenses were not his, he did not abuse his power. The DPP argued that if you provide money to the villagers, they will believe you were the one who gave it to them. What will you benefit from that? The villagers will vote for him in the next election. Therefore, as a politician, that is their main goal. So how should we approach a situation like this? If that is the case, if you want to emphasise legal grounds, you need to go by other means.[925]

Besides, other limitations on the issue of proxy and beneficial ownership relate to the asset declaration. According to some, the asset declaration law usually fails to control the possible transfer of properties to a third party because it only imposes an

[924] This case is not reported or recorded in the relevant criminal history database.
[925] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.

obligation to declare personal income and assets, as well as those of immediate family members. So, assets will likely be transferred to members of the extended family. Basically, in several countries, there is a growing trend towards mandating that public officers disclose their assets and income in an honest manner, not only for their own benefit but also for that of their spouses, children, and other immediate family members.[926] Therefore, there is no need to declare the assets when they are listed under proxy names, and the issue of proxy and third parties makes corruption difficult to prove. The asset declaration law alone will only help to reduce the problem, but it will not help to solve it.[927] This problem demonstrated that criminalising the asset declaration law alone is insufficient to prevent the proxy problem in the case of illicit enrichment and that we also need to criminalise illicit enrichment to prevent those issues.

4.1.14 The lack of a legal definition of illicit enrichment in Malaysia makes proving *mens rea* difficult in prosecutions.

The issue of criminalising IE is related to Malaysia's lack of a solid and clear definition of IE. The five elements and definition of illicit enrichment do not fall within the scope of "gratification" or any predicate offences under the MACCA. The interpretation of gratification in the MACCA[928] does not align with the elements of IE. Without a clear definition of IE within the Malaysian legal framework, the courts

[926] Akhbar Satar, "It is Vital to Declare Assets," *The Star,* August 27, 2016, https://www.thestar.com.my/opinion/letters/2016/08/27/it-is-vital-to-declare-assets

[927] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.

[928] Please refer to the definition of gratification in the MACCA 2009, subtopic 2.1.1 in chapter two.

are unable to interpret or apply the crime accurately in judgments for IE-related cases.[929]

Besides, when there is no specific and comprehensive definition of IE, it is difficult to criminalise IE.[930] Therefore, in order to have a specific offence for IE, Malaysia must first have a definition of IE. Despite not specifically mentioning it, Section 36 indirectly criminalises illicit enrichment,[931] which has caused problems. When the definition is too general, it may be open to abuse and violate the rule of law (ROL). According to the ROL, if you want to criminalise something, you must make sure that everyone is aware of it because you expect them to obey the law. Therefore, it is risky to implement an offence without a clear definition of IE, as it could undermine the rule of law, which relies on legal clarity. For example, if the lawmakers want to criminalise murder, they must understand what constitutes murder.[932] So legal clarity is important in order for people to understand what the law requires them to do or refrain from doing. The law should be free from uncertainty and ambiguity. Furthermore, Malaysia must first have a definition of IE, mostly for reasons of consistency. The criminal aspect needs to be consistent in terms of *mens rea* and *actus reus*. It is challenging for the court to reach a conclusion if there is no clear definition of what constitutes illicit enrichment since *actus reus* and *mens rea* are

[929] Please refer to case PP v. Abdul Rahman Harun
[930] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[931] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[932] Ibid.

necessary in order to proceed with a specific charge.[933] When addressing the issue of the criminal element, the legislator must fulfil the requirement of the criminal law element, which is *mens rea* (intention and knowledge).

The prosecution must prove more than just knowledge, that the accused had intentions and intentionally tried to enrich himself. Where is the intention, or *mens rea*? How do you establish the *mens rea*? Is it sufficient to know that someone has excessive wealth alone? Or do you have to prove further that he has a corrupt mind? Because MACC has so many features about mental states, such as intention or knowledge, the definition of illicit enrichment is now the problem, because the intention is there but it is difficult to prove that the person had intention to enrich his property and assets. Therefore, the concept and idea of *mens rea* in the context of illicit enrichment present significant challenges.[934] However, the issue of *mens rea* can somehow be solved with the asset declaration law. For example, a person was required to declare assets, but he did not declare them, and he knows it is wrong. So, he is doing it intentionally to conceal, hide, keep it a secret, and prevent something from becoming known. Whether he acquired his wealth through legal or illegal means, he has always intended to hide the fact that he is living beyond his means. Not only did he forget to declare it, but he also intended to hide the wealth by doing

[933] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[934] Ibid.

so.[935] This is why asset declaration law is important in helping to prove intention or *mens rea* in IE law.[936]

The consequences of not having a specific law regarding IE would be that all public officers would not be aware that possessing excessive wealth is wrong, that they must understand what is meant by 'excessive wealth,' wealth that is not commensurate with their income and salary. Furthermore, they must also have knowledge about the wrongful possession of wealth that results from illegal gain or corruption, which is a crime. Therefore, it is important to have a specific law regarding IE to inform public officers about the wrongdoing. One recommendation to prevent IE crime is to sign the Corruption Integrity Pledge, which is discussed in Chapter 2. CIP is one of the mediums and ways to inform public officers that possessing excess property without declaring the source of the income is a violation of the asset declaration, or IE Act. So, it is very important to have a specific law on IE in order to educate public officers about the crime of illicit enrichment.

Therefore, in order to identify and address the issue of IE definition, we might refer to the concept of corruption definition, where the term "corruption" itself does not have a universally agreed definition and there is no comprehensive and universally accepted definition of corruption. The common definition that has achieved consensus among scholars and practitioners is that "corruption is the use or misuse of

[935] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[936] The concept of wilful blindness can act as a substitute for *mens rea*, which has been thoroughly explained in subtopic 2.5, Chapter 2.

public office for private gain."[937] However, many countries still consider corruption to be a criminal offence. This does not exclude Malaysia from doing the same, simply because there is no mutual agreement on the definition. In light of the fact that illicit enrichment is a crime that needs to be prevented, I would recommend Malaysia's legislation define it in accordance with the UNCAC, Hong Kong, and strengthen the current provision for IE. Interestingly, UNCAC provides a definition of IE when they want to define and criminalise IE as an offence. This demonstrates how important a solid legal definition of IE is if a country wishes to make it an offence. Plus, the public needs to know and obey the law if Malaysia wishes to criminalise IE. In chapter 5, the recommendation for this definition issue is discussed in more detail.

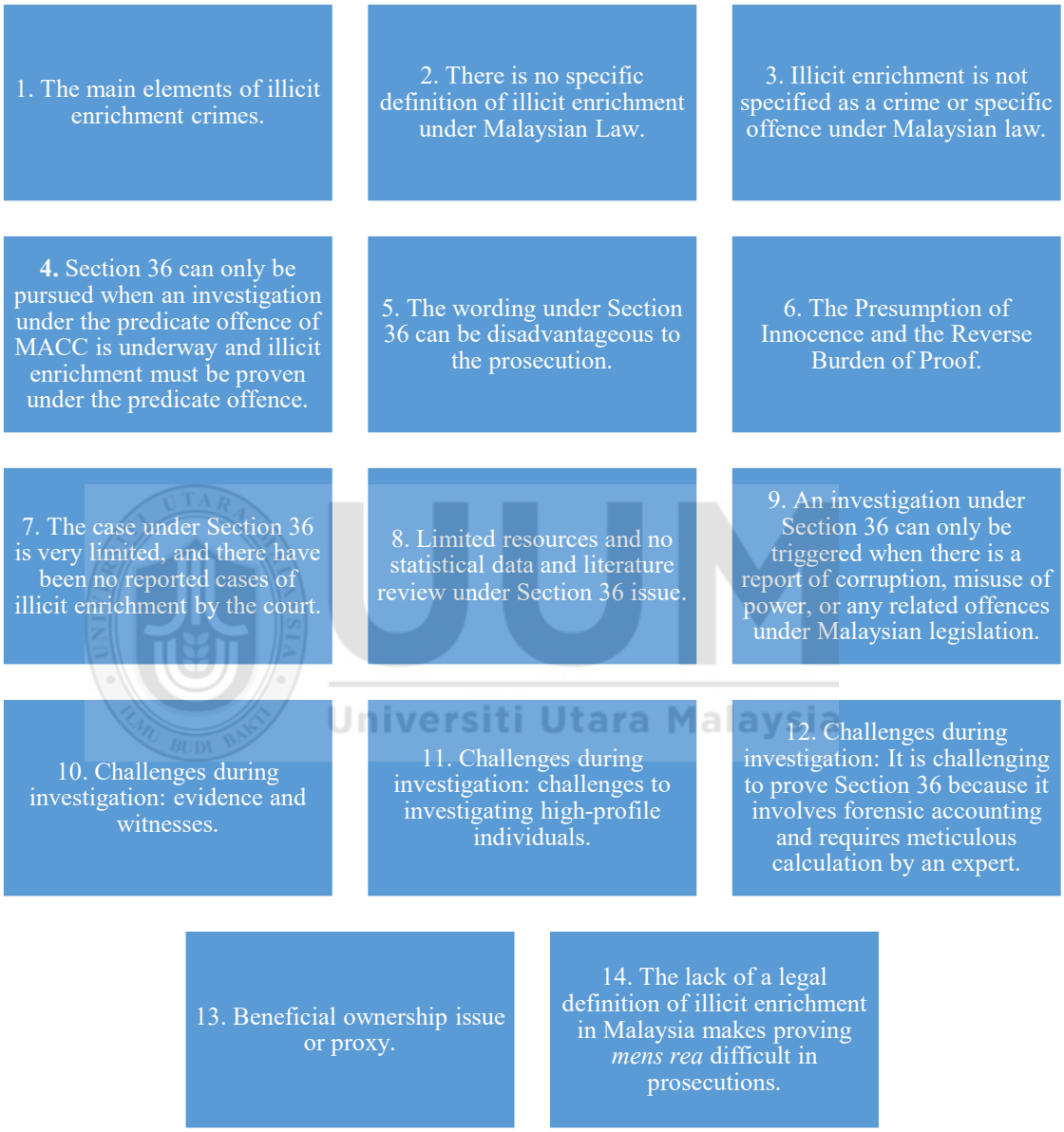
Universiti Utara Malaysia

4.1.15 Findings and Analysis of Research Question 1

Based on the above-mentioned analysis, discussion from the data respondents, and literature review, the researcher has developed a conceptual framework for the issues of Section 36 and IE. The conceptual framework is illustrated as follows:

[937] J. Edgardo Campos and Sanjay Pradhan, *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level* (Washington, D.C.: The International Bank for Reconstruction and Development / The World Bank, 2007).

Figure 4.1.15 Conceptual Framework on the issues, challenges and weaknesses of Section 36 of the MACCA.




Universiti Utara Malaysia

After obtaining and analysing the data, the researcher aims to show that the principal finding for Research Question 1, "What are the laws on illicit enrichment that are enforced to eradicate the problem of corruption in Malaysia?" has been addressed. Research Question 1 has also been answered, whereby Section 36 of the MACCA is a law related to illicit enrichment that aims to address Malaysia's corruption issue. While Section 36 deals with illicit enrichment and has the potential to combat corruption in Malaysia, upon gathering and analysing all the data, the researcher discovered several issues, challenges and weaknesses in the wording, application and implementation of Section 36. These concerns are illustrated in the conceptual framework above and discussed in subtopics 4.1.1 to 4.1.14.

Due to the absence of a specific legal definition for IE and the fact that IE is not specifically listed as a crime in the legislation, resources addressing IE are limited. Moreover, since the issue of IE is relatively new in Malaysia, many scholars do not extensively discuss it. A number of issues have arisen as a result of Section 36's wording, including the fact that very few cases can be brought to court for prosecution and that no Section 36-related cases are being reported. Furthermore, a weak prosecution process decreased the likelihood that the case would be successful under Section 36 of the MACCA simultaneously. Section 36 can only be pursued when an investigation under the predicate offence of MACC is underway, and illicit enrichment must be proven under the predicate offence. It is not a standalone provision. Due to Section 36's ambiguity and uncertainty, an investigation under this

Universiti Utara Malaysia

provision can only be triggered in the event of a report of corruption, fraud, abuse of power, or any other similar offence in accordance with Malaysian legislation. The analysis also found a few challenges encountered during the investigation of corruption and IE cases, namely, challenges in gathering evidence and witnesses, challenges in investigating high-profile individuals, and challenges to proving Section 36 that involve forensic accounting and meticulous calculation by an expert.

These are the situations and issues that make it difficult for MACC to investigate. However, MACC is doing its best to catch up with current problems and situations. In order to address such problems, the indicators of corruption, such as possession of property that exceeds legal sources of income, need to be criminalised, and the main elements of IE[938] must be taken into account because it is clear that illicit enrichment should be criminalised as an offence because it is a type of corruption crime. The apparent increase in wealth by public officers may be a sign that corrupt acts have taken place. In fact, the secrecy of corruption crime makes it difficult to gather evidence for prosecution and efficient law enforcement, so that is why specific provisions for IE are required because corruption is hard to prove and can be a potential problem solver for all 14 issues that were addressed above. Besides, the specific offence of illicit enrichment without the establishment of a predicate offence could also increase the number of successful prosecutions and convictions.

[938] Subtopic 4.1.1 describes the main elements of IE.

It is important to implement a legal framework for illicit enrichment that includes standards and rules to identify, prevent, and resolve conflicting situations. Since not all cases of public officers' corruption can be proven by taking and giving bribes, some public officers are good at hiding and living their lives with illegal wealth and money. Since there is no law that regulates public officers living beyond their means, they remain free to commit crimes that are more likely to escape punishment.

Therefore, based on the discussion of the weaknesses and challenges of Section 36, here is the justification for why Malaysia needs a stand-alone provision for illicit enrichment (IE) cases: Firstly, the offence of IE addresses corrupt public officers in cases where direct evidence of bribery is lacking. The IE offence provides an alternative legal approach by focusing on unexplained increases in wealth. Essentially, if a public official's assets significantly exceed their legitimate income, it suggests they may have acquired these assets through corrupt means, even without direct proof of bribery or corruption. This provision would enable authorities to hold public officials accountable for unexplained wealth without needing to prove traditional bribery charges, thereby strengthening anti-corruption efforts.

Secondly, while IE-related cases can be charged under alternative provisions such as AMLA, abuse of power, or other laws, a stand-alone IE offence remains necessary. Existing provisions like AMLA, asset forfeiture, or the Minor Offences Act are inadequate to prosecute offenders who possess excessive wealth that cannot be

Universiti Utara Malaysia

directly traced to criminal proceeds, such as bribery or abuse of power. So, what is the best provision to charge them? Is property forfeiture enough? No, as forfeiture alone does not punish the offender but merely seizes their assets. If there is no provision against excessive wealth, offenders can continue to commit the same crime and move about without restriction. The case of ***PP v. Abdul Rahman Harun*** serves as a test case under Section 36. Despite the presence of all elements indicating unexplained wealth, the court acquitted the offender because the case could not be proven under any predicate offence under the MACCA. When courts address illicit enrichment-related cases through alternative provisions, such as anti-money laundering (AMLA) or abuse of power laws, the necessity of a specific IE offence depends on the effectiveness of these substitutes. While AMLA and abuse of power laws can partially address unexplained wealth or suspicious asset accumulation, they may not fully capture the unique aspects of IE. IE laws specifically target wealth that appears disproportionate to an individual's lawful income, which can fall outside the scope of AMLA or abuse of power laws that may require evidence of specific corrupt acts, financial transactions, or misuse of authority. A dedicated IE law would offer a clear legal framework and definition, assisting prosecutors and courts in consistently addressing cases where wealth accumulation lacks a lawful explanation. This clarity would reduce ambiguity and improve conviction rates, addressing gaps that AMLA or abuse of power provisions may not fill. While AMLA and abuse of power provisions can cover some IE cases, a specific IE offence remains beneficial. It would establish a targeted approach, particularly for cases where unexplained

Universiti Utara Malaysia

wealth is apparent but does not directly involve money laundering or abuse of power. Therefore, Malaysia requires a specific, an independent and a stand-alone provision for IE.

Thirdly, while Section 36(3) implicitly contains two elements that can constitute the crime of illicit enrichment, namely, 'possessing property that exceeds legal income' and 'failing to provide a satisfactory explanation,' the law lacks clarity because it does not explicitly state that possessing unexplained wealth is a crime. In the case repeatedly cited in this thesis, ***PP v. Abdul Rahman Harun***, the court acquitted the defendant despite evidence of unexplained wealth, indicating that Section 36 lacks the ability to prosecute a public official for excessive income without a reasonable explanation. The effectiveness of a law is demonstrated through successful prosecutions. Malaysia's experience with prosecuting IE-related cases has been unsuccessful, as seen in the Abdul Rahman Harun case, due to the fact that Section 36 implicitly addresses IE but does not directly criminalise the possession of unexplained wealth. This lack of specificity hampers the prosecution's ability to prove the law's effectiveness. Respondent 8 highlighted that Section 36's limitations remain unaddressed because the provision is rarely applied; its shortcomings only become evident after regular use. This further underscore the need for a specific, stand-alone law to address the possession of unexplained wealth. Although the Abdul Rahman Harun case was prosecuted, no conviction was secured, and Section 36 has no recorded conviction rate. This illustrates that successful prosecutions would likely encourage and facilitate further use of illicit enrichment as a prosecutable offence.

Universiti Utara Malaysia

Effective prosecutions would also help build expertise among investigators, prosecutors, and courts and contribute to the development of case law on illicit enrichment, which remains underdeveloped in Malaysia.

Fourthly, since Malaysian legislation lacks a definition of illicit enrichment, it is challenging for courts to interpret this crime.[939] Section 3, which addresses gratification, also does not define IE. This absence of a specific definition is significant, how can courts interpret illicit enrichment without a clear statutory definition? In countries without such a definition, courts may rely on international conventions like the United Nations Convention against Corruption, which defines IE as a significant increase in assets that cannot be reasonably explained by an individual's lawful income. Courts might also consider case law and interpretations from other jurisdictions to establish a framework for assessing the crime. However, in Malaysia, courts have not applied these principles in IE-related cases, as evidenced in ***PP v. Abdul Rahman Harun***, where the court acquitted the defendant without utilising these international standards. When courts in Malaysia rarely apply international principles or standards to interpret IE, and many IE cases result in acquittals, several issues arise. First, the absence of a clear legal definition or statutory framework for IE may create ambiguity, making it difficult to establish a strong legal basis for prosecution. This ambiguity often favours defendants, as precise legal definitions are essential to secure convictions, especially in complex

[939] Please refer to the discussion in subtopic 4.1.14.

financial crimes. Second, if acquittals are common in IE cases, this may highlight difficulties in proving unexplained wealth beyond a reasonable doubt. Without clear guidelines on what constitutes IE, prosecutors may find it challenging to present persuasive evidence that meets the required burden of proof, resulting in frequent dismissals. Finally, if courts are reluctant to interpret IE in line with international conventions or external standards, this may show that judges are cautious or reluctant to increase criminal responsibility without clear laws supporting it. To address these issues effectively, legislative reforms may be necessary to clearly define IE, set evidentiary standards, and guide how courts should interpret unexplained wealth, facilitating more consistent and successful prosecutions.

In 2021, ninety-eight illicit enrichment laws were identified that are presently in effect globally.[940] However, due to uncertainty and an unclear law in Malaysia, no action has yet been taken under the illicit enrichment crime. Malaysia needs to seriously fix the law of illicit enrichment and asset declaration in a way to prevent corruption and reduce the level of corruption in this country.

In conclusion, all of the issues, challenges and weaknesses indicate that the current Section 36 is insufficient to use as a weapon to prevent IE and corruption because the law itself is scarce, inadequate, insufficient, and weak. So, one way to overcome this type of problem is to amend and strengthen Section 36 of the MACCA. Malaysia

[940] Andrew Dornbierer, *Illicit Enrichment : A Guide to Laws Targeting Unexplained Wealth* (Basel Institute on Governance, 2021).

needs an effective IE law, and it is necessary to strengthen the current IE law in order to prevent the worsening case of IE crime among public officers. The initiative to criminalise illicit enrichment as a criminal offence in Malaysia represents a significant aspect of the international anti-corruption framework. A few suggestions and potential recommendations for the law of IE are discussed in more detail under Chapter 5.

Universiti Utara Malaysia

# CHAPTER FIVE

# LEGAL FRAMEWORK ON ASSET DECLARATION

The problem statement and literature review in Chapter 1, on pages 24 and 73, respectively, both mention and discuss the issue of asset declaration in Malaysia. Thus, the analysis in this chapter further discusses matters relating to asset disclosure in Malaysia. This analysis has also discovered some challenges of not having a specific law requiring public officers to declare assets, as well as the inadequacy of codes of ethics that are closely related to the issue of illicit enrichment in Malaysia. By the end of the discussion of this subtopic, both Research Question 2 and Research Objective 2 had also been answered.

Universiti Utara Malaysia

## 5.1.1 Introduction

The primary purpose of asset declaration (AD) laws is to monitor the wealth of politicians and public officers, with the aim of preventing conflicts of interest, track possible illicit enrichment crimes, and other corruption-related offences in the public sector.[941] For many years, there have been repeated calls for transparency and full public disclosure of the assets of elected and public officers, as this goes a long way towards improving the confidence of Malaysian citizens and foreign investors in the

[941] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.

integrity, accountability, and good governance of the government.[942] One way to increase the effectiveness of AD is by promoting transparency in declaring the assets.[943] This is a valid demand by the citizens due to the fact that public officers have authority over the distribution of resources[944] and they are an entrusted person to handle government or public's funds,[945] even their salaries are paid through the public tax contribution.[946] Since public officers owe a higher duty to the public because they serve the public and because their source of income is from taxpayers, who have a direct impact on the public,[947] it is crucial that they disclose theirs assets and income.[948] An asset declaration can identify a public officer's excessive income[949] and it is a kind of web flex to detect whether their income is commensurate with their lifestyle or whether they are living beyond means.[950] Their courage and transparency in declaring their assets demonstrate that they have nothing to hide and are not engaged in any illegal activities.[951]

Universiti Utara Malaysia

[942] Akhbar Satar, "It is Vital to Declare Assets," *The Star,* August 27, 2016, https://www.thestar.com.my/opinion/letters/2016/08/27/it-is-vital-to-declare-assets
[943] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[944] Akhbar Satar, "It is Vital to Declare Assets," *The Star,* August 27, 2016, https://www.thestar.com.my/opinion/letters/2016/08/27/it-is-vital-to-declare-assets
[945] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[946] Akhbar Satar, "It is Vital to Declare Assets," *The Star,* August 27, 2016, https://www.thestar.com.my/opinion/letters/2016/08/27/it-is-vital-to-declare-assets
[947] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[948] Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020.
[949] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[950] Ibid.
[951] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

It is noted that political parties were ranked as the most corrupt among the top six key institutions in Malaysia, ahead of the police and public officers, based on the Transparency International's 2020 General Corruption Barometer.[952] With political parties being perceived as the institution or organisation worst affected by corruption, to counter this perception it is even more important for such entities and connected individuals to declare their assets.[953] A good mechanism such as an effective asset declaration system can be used to verify them and prevent corruption and the abuse of power. If there is reasonable ground to believe that a leader is living beyond his means, which is the most common red flag, an asset declaration can serve as the basis for an investigation by the relevant enforcement agencies. Notably, the public could ensure that leaders do not abuse their power for their own benefit by mandating asset declarations that are subject to public review.[954] Civil society may hold leaders accountable when their assets are made public. Although frequent asset declarations should be made and recorded by a reliable, independent, and effective independent body, it is also appropriate to have forensic accounting experts and investigators monitor the assets periodically.[955] Moveable and immovable properties are among the types of assets that require declaration.

Universiti Utara Malaysia

[952] Akhbar Satar, "Declaration of Assets in All Branches of Govt A Huge Step Forward," *The New Straits Times*, September 2022, https://www.nst.com.my/opinion/columnists/2022/09/833569/declaration-assets-all-branches-govt-huge-step-forward

[953] Akhbar Satar, "It is Vital to Declare Assets," *The Star,* August 27, 2016, https://www.thestar.com.my/opinion/letters/2016/08/27/it-is-vital-to-declare-assets

[954] Chin Chin Hong, "Reforming the System of Asset Declaration in Malaysia as a Strategy to Combat Corruption" (master's thesis, International Anti-Corruption Academy (IACA), 2016).

[955] Ibid.

### 5.1.2 MACC and Asset Declaration

Financial disclosure, or the disclosure of assets, is important information that will be used by MACC for investigation because it is a tool or parameter to detect illicit wealth and determine whether the income is commensurate with the assets.[956] MACC uses the asset declaration information for its investigations because they can use the existing information to their advantage.[957] The power of MACC in asset declaration is limited because it is governed under the Public Service Department Malaysia.[958] However, Section 36 of the MACC Act 2009 allows the MACC to conduct investigations against individuals who have been discovered to be carrying out extravagant lifestyles that exceed their income level.[959] Asset declaration statements are solely utilised by the MACC in Section 36,[960] and for investigative purposes.[961] Nonetheless, the current AD system is inadequate,[962] it is not bound by any law,[963] and it has no weight to punish. As a result, it has a few weaknesses which are discussed in more detail below.

Universiti Utara Malaysia

[956] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[957] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[958] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[959] "MACC Recommends Act for Mandatory Asset Declaration," *Malaysia Kini*, 2021, https://www.malaysiakini.com/news/582969?login_method=google.
[960] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[961] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[962] Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020.
[963] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020 & Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020.

The relationship between asset declaration and Section 36(1) of the MACCA is that Section 36(1) requires the accused to declare their assets in the form of a notice or statutory declaration to verify that they did not acquire their assets and properties through illegal means. The asset declaration system, a component of the Human Resources Management Information System (HRMIS), which obliges public officers to declare their assets, is further discussed in 5.1.4.

Section 36 (1) appears to be similar to asset declaration, but it differs since it requires a person to declare and list their assets whenever they are being investigated for any MACCA predicate offences. In other words, when an investigation under Section 36 is conducted, two new offences will be established: the first is failing to disclose assets, and the second is when there is an offence under the predicate offence of MACCA, then only prosecution will go for Section 36. Due to the fact that when public officers disclose their wealth and assets, it immediately becomes apparent whether they are living beyond their means or not, failing to declare assets is essentially an indicator or trigger factor for illegal activities or corrupt offences.[964] However, they occasionally fail to disclose because they may be engaging in unlawful activity or may have their assets registered in another person's name or through a proxy, making them difficult to identify.[965] On the other hand, the asset declaration system was developed for public officers to declare their assets every five years while in office, utilising the HRMIS system. The previously mentioned

[964] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[965] Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020.

provision has given MACC the authority to conduct a more thorough investigation into the asset declaration provided under Section 36(1) if MACC has reasonable grounds to believe that the public officer is living beyond his means. The public officer who has received a written order under Section 36(3) of the MACCA shall explain their acquisition, possession, control, or hold of such excess.

MACC officials clarified that the MACC primarily uses asset declarations to detect cases of potential illicit enrichment.[966] Additionally, if Malaysia has an effective asset declaration system[967] that has evidential value, it will be easier to prove illicit enrichment. MACC only uses the statement of asset declaration for Section 36[968] or when investigating those who are living beyond means because the asset declaration statement is a part of the MACC evidence, and preliminary can compare it to the assets that have been declared by the public officer.[969]

Universiti Utara Malaysia

Asset declaration is important for MACC to use in court,[970] as well as to ensure integrity and transparency.[971] As mentioned under Chapter 3, in the case of ***PP v.***

[966] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2016-2021.
[967] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.
[968] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[969] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[970] Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[971] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020. & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

***Mohd Noor bin Rejab***,[972] where the MACC used the asset declaration statement to investigate and prosecute the defendant, and one of the factors that the court considered was the defendant's failure to declare the property and his intention to hide the excessiveness of the property he had acquired. He was convicted under Section 23 of the MACCA.[973] So, as a public officer, he was responsible for declaring it to the head of department if he received any property or valuables thing other than his salary or emolument.[974] This case is similar to an illicit enrichment case and can be used as a referral for illicit enrichment cases.

This is one example where a non-declaration of assets indicates illegal activities. He must therefore declare it transparently in order to disprove any wrongdoing. Because there is a clear connection between non-declaration of assets and committing an offence by doing so,[975] he is hiding them out of fear that the authorities will discover that his income is not commensurate with his assets. There are a lot of presumptions in cases handled by the MACC where the act of failing to comply with an asset declaration might be inferred by the court as evidence that the defendant is

[972] [2019] MLJU 1008 & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[973] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[974] Ibid.
[975] Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020. & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

committing an offence.[976] Why would public officers be so secretive about their assets if they were not doing anything wrong? [977]

### 5.1.3 Regulation 10, Public Officers (Conduct and Discipline) Regulations 1993, and Service Circular No. 3 of 2002

Regulation 10 of the Public Officers (Conduct and Discipline) Regulation 1993 P.U. (A) 395/1993, when read in conjunction with Service Circular No. 3 of 2002: Ownership and Declaration of Assets by Public Officers, provides the basis for making a declaration of assets or property owned by public officers (in all categories). According to this regulation, public officers must submit a list of assets every five years of service[978] and promptly declare any new assets or additional property they acquire.[979] The requirement to declare an asset is also one of the key performance index (KPI) if a public officer wants to get promoted[980] because asset declaration is a pre-condition for the confirmation and promotion of all public officers under Chapter A (Appointment, Promotion, and Termination of Service) of the General Order. The findings of this study show that there is no law requiring or

[976] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[977] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.
[978] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.
[979] Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019.
[980] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.

making it compulsory for public officers to declare assets. Only the aforementioned regulations govern the requirement to declare assets, as further discussed in 4.2.6.

5.1.4 Human Resources Management Information System (HRMIS)

All public officers must declare their assets online through the designated public service website, known as the Public Service Human Resource Management Information System (HRMIS).[981]

Declarations are made electronically in the Human Resources Management Information System (HRMIS), and declarations are further verified by the Secretariat of the respective organisation, only in regard to compliance or non-compliance with the said Circular No. 3 of 2002. Although verification of the contents of such declarations or outside employment is on a case-by-case basis at the individual department levels, declarations are endorsed by the Head of Department. All declarations are classified as "confidential" documents, as provided for under paragraph 28 of Service Circular No. 3 of 2002.[982] Judges and magistrates are also required to declare their assets.[983]

Universiti Utara Malaysia

[981] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020. & Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020. & Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[982] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2016-2021.
[983] Judges' Code of Ethics 2009

5.1.5 Relationship between asset declaration and illicit enrichment.

Asset declaration has a significant relationship with illicit enrichment where excessiveness of assets and illicit enrichment can be detected and traced through asset declaration[984] because asset declaration is a tool for detecting illicit enrichment. In fact, asset declaration would be helpful for the prosecutor to establish other offences as well, like taking and giving bribery,[985] and this indirectly can prevent public officers from committing any corruption crimes.[986] As provided under Regulation 10, all public officers are required to make written declarations of properties owned by them, a spouse or child, other family members, associates, or held on their behalf. Even if these individuals are not obligated to declare their assets, public officers must submit this information. The purpose of requiring individuals associated with public officials to disclose their assets is to identify and prevent the illegal transfer of wealth between them.[987]

Reports made by the Declaration of Asset Secretariat to the Heads of Department for endorsement or approval are only in regard to compliance or non-compliance with the said Circular No. 3 of 2002. Verification of the contents of such declarations or outside employment is on a case-by-case basis at the individual departmental levels.

[984] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[985] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.
[986] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020. & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[987] Chin Chin Hong, "Reforming the System of Asset Declaration in Malaysia as a Strategy to Combat Corruption" (master's thesis, International Anti-Corruption Academy (IACA), 2016).

However, cases involving illicit enrichment, outside employment, and conflict of interest depend largely on public complaints, allegations, or STR reports by reporting institutions under AML or CTF obligations in compliance with the Anti-Money Laundering, Anti-Terrorism Financing, and Proceeds of Unlawful Activities Act 2001. The complaints are made directly to law enforcement agencies like the Malaysian Anti-Corruption Commission, the Royal Malaysia Police, or the Inland Revenue Board for investigations under offences such as unexplained assets, money-laundering, a public officer's involvement in businesses, or abuse of positions for his own or relatives' benefit.

5.1.6 Penalties for offences relating to asset declaration.

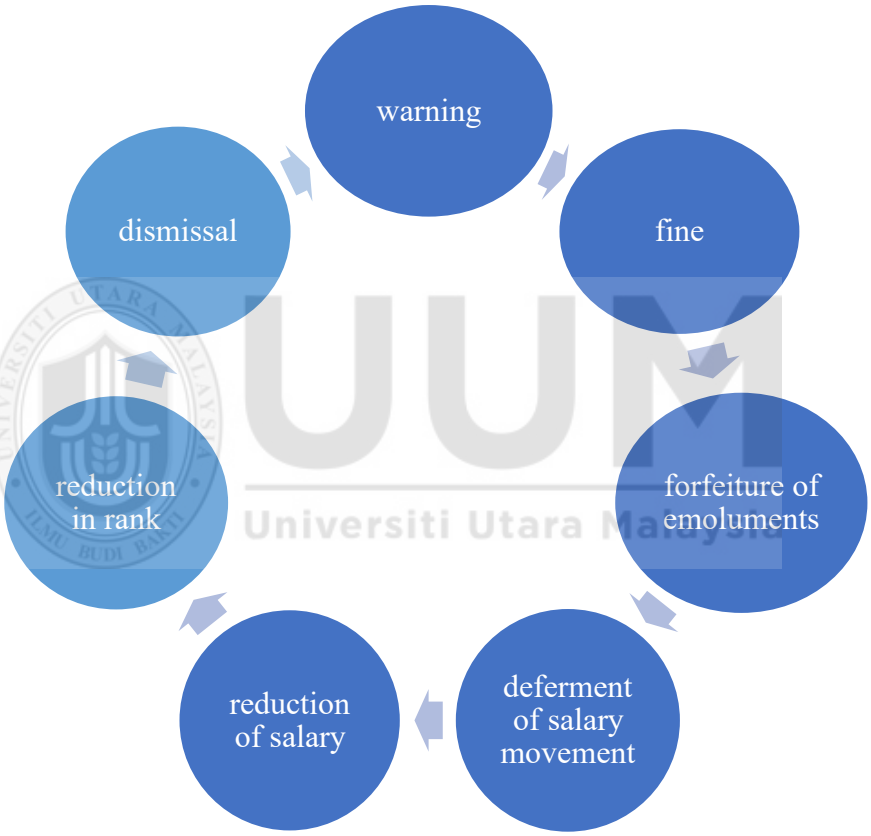
The failure to declare an asset falls only under disciplinary action or a code of ethics.[988] There is no specific law in Malaysia that requires public officers to declare their assets,[989] so officials who fail to declare their assets shall be subjected to disciplinary actions that are provided under paragraph 29 of the Service Circular Disciplinary Measures and Processes: Regulation 38 of the Public Officers (Conduct

[988] Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019. & Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020. & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

[989] Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019. & Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019. & Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.

and Discipline) Regulations 1993 only. The enforced sanctions mechanism, as outlined in these regulations, describes the possible disciplinary penalties that can be imposed on an officer found guilty of not disclosing assets. These punishments are as follows:

Figure 5.1.6 Enforced sanctions mechanism: [990]




[990] Chin Chin Hong, "Reforming the System of Asset Declaration in Malaysia as a Strategy to Combat Corruption" (master's thesis, International Anti-Corruption Academy (IACA), 2016).

Table 5.1.6: Sanctions for non-compliance of asset declarations

| No | Type of non-compliance | P.U.(A) 395 of 1993 / Service Circular No. 3 of 2002 | MACCA | PENAL CODE |
|---|---|---|---|---|
| 1 | Failure to declare assets | Disciplinary action under paragraph 29 of Service Circular No. 3/2002.<br><br>The prescribed disciplinary actions for not declaring assets are outlined in the enforced sanctions mechanism mentioned above. The minimum penalty would be a warning, while the most severe consequence would be dismissal. | Section 36 (2)<br>Failure to comply with terms of the notice issued under Section 36 (1) within such time as specified therein-<br>imprisonment for a term not exceeding 5 years and to a fine not exceeding MYR 100,000.00<br><br>Section 36 (3) &<br>Section 36(4)<br>Failure to comply with notice issued in pursuant to within such time as may be specified, shall be liable to:<br>Imprisonment for a term not exceeding 20 years and fine which is not less than 5 times the value of the excess, if the excess is capable of being valued, or MYR10,000 whichever is higher | Not available |
| 2 | False declarations | The prescribed disciplinary actions for false declarations of assets are outlined in the enforced sanctions mechanism mentioned | Section 27- a fine not exceeding MYR100,000 or imprisonment for a term not exceeding 10 years or to both | False declaration can also be investigated under Section 3 of Statutory Declarations Act 1960 [Act 783] and punishable under Sections 199 and 200 of |

Universiti Utara Malaysia

| | | | | |
|---|---|---|---|---|
| | | above. The minimum penalty would be a warning, while the most severe consequence would be dismissal. | | the Penal Code [Act 574]<br><br>Section 181of Penal Code - imprisonment for a term which may extend to 3 years and shall also be liable to fine. |
| 3 | Unsatisfactory explanation | Disciplinary Action under paragraph 11 of P.U.(A) 395 of 1993 - The prescribed disciplinary actions for false declarations of assets are outlined in the enforced sanctions mechanism mentioned above. The minimum penalty would be a warning, while the most severe consequence would be dismissal. | Not available | Not available |

Universiti Utara Malaysia

Penalties for offences relating to asset declaration are provided under MACCA, the Statutory Declarations Act 1960 [Act 783], and the Penal Code. Public officers can be punished for failing to declare assets under Section 36(3) of the MACCA. The MACC conducts investigations under Section 36 into individuals who lead extravagant lifestyles beyond their income level. A public officer found guilty of illicit enrichment faces up to 20 years in prison and a fine of at least five times the value of the excess, if it can be valued, or MYR10,000, whichever is higher. Besides, another offence for asset disclosure is a false declaration. False declaration of assets can be investigated under Section 3 of the Statutory Declarations Act 1960 [Act 783] and punishable under Sections 199 and 200 of the Penal Code [Act 574], and it is also governed under Section 181 of the same section, where if a public officer is convicted, he or she would be fined and imprisoned for a term not exceeding three years.[991] However, for the unsatisfactory explanation offence, it is only governed by disciplinary action. These disciplinary actions may be imposed on the officer, depending upon the seriousness of the offence,[992] and as mentioned in Figure and Table 5.1.6,[993] they are governed under paragraph 29 of the Service Circular Disciplinary Measures and Processes: Regulation 38 of the Public Officers (Conduct and Discipline) Regulations 1993. This regulation outlines the disciplinary penalties

Universiti Utara Malaysia

[991] Fuad Nizam, "Wealth of Those in Power Should be Made Transparent with Asset Declaration Act," *The New Straits Times,* 2023, https://www.nst.com.my/news/nation/2023/04/900822/wealth-those-power-should-be-made-transparent-asset-declaration-act.

[992] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2016-2021.
& Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019.

[993] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020. & Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020.

that may be imposed on the officer if he is found guilty of failing to declare assets. It includes a warning, a fine, forfeiture of emoluments, postponement of salary movement, salary reduction, reduction in rank, and dismissal. One of the severe penalties under this code of ethics is job termination or dismissal from the existing position.[994]

A terminated public officer is not eligible for any pension benefits after retirement. This is an illustration of the worst-case scenario a public officer would experience if they got terminated, and the impact of disciplinary action is crucial to the public officer. Therefore, the termination of a public officer should cause concern, as it deprives him of any benefits or facilities. That is also a sort of punishment, and we cannot assume that imprisonment will be sufficient to teach them a lesson. Instead, we must consider other options, such as dismissal or termination.[995]

Universiti Utara Malaysia

However, the code of ethics does not specifically outline termination or dismissal as a penalty for any particular category of asset declaration offence. No specific penalty indicates that any penalty relating to the offence of asset declaration is subject to the head of the respective department.[996] Furthermore, there have not been any cases of termination for failure to disclose assets. This shows that the penalty under the code of ethics is lighter, which explains why public officers do not follow the regulations

[994] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[995] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[996] Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020. & Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019.

governing asset declarations. Despite having rules and sanctions for failing to comply with the asset declaration, the code of ethics is not compulsory for public officers and politicians. All public officers should be made compulsory to declare their assets, and one way is by having a law on asset declaration.[997] These disciplinary penalties for failing to declare assets are one of the government's efforts to show transparency and prevent public officers from committing any corruption-related offences.[998]

Looking at the statistics on penalties for asset disclosure offences, it appears that the law only applies to cases like failing to declare, false declarations, and unsatisfactory explanations. However, there is no law requiring members of parliament and public officers to declare assets. The penalties relating to offences of asset declaration are only governed by a few pieces of legislation, such as the Code of Ethics, MACCA, the Statutory Declarations Act 1960 [Act 783], and the Penal Code. In fact, the law is scattered and insufficient, and the penalty under regulation does not specifically refer to any offences and is simply dependent on the head of department's judgment. Therefore, when there is no law to govern public officer to declare assets, they will not comply with the requirement to declare asset.

[997] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.
[998] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

5.1.7 Initiatives by the Malaysian Government on Asset Declaration for public officers and Members of Parliament.

There are growing efforts and improvements requiring public officers to declare their assets and income, as well as, increasingly, the assets and incomes of immediate family members. The main goal of asset declarations is to prevent corruption and detect misappropriation of public funds. This measure increases transparency and trust in the public administration and prevents conflict of interest, illicit enrichment, and the proliferation of unexplained wealth. Furthermore, it is important for public officers to declare for integrity purposes.[999] A person should declare their assets both before and after holding a position.[1000] A net worth analysis should be conducted periodically, and it is advisable to do it at least once every two years.

The regulations in the code of ethics, MACCA, the Statutory Declarations Act 1960 [Act 783], and the Penal Code currently govern the internal verification of asset declarations for public officers. The Institute for Democracy and Economic Affairs proposed that the MACC should be authorised to verify and monitor asset declarations, recommending a modification to the current system.

[999] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

[1000] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & Akhbar Satar, "Declaration of Assets in All Branches of Govt A Huge Step Forward," *The New Straits Times*, September 2022, https://www.nst.com.my/opinion/columnists/2022/09/833569/declaration-assets-all-branches-govt-huge-step-forward

So, one of the efforts done by the Malaysian government towards transparency and preventing illicit enrichment is that, in 2018, the Inland Revenue Board of Malaysia (IRBM) set up a special unit to investigate any individual or business owner who shows extraordinary wealth on social media. The unit will carry out further investigation before taking follow-up actions against individuals or the account holders showing such wealth on the social media platform. The development of today's social media has affected the lives of some individuals, who seem to enjoy sharing with others their jewellery possessions, luxury watches, handbags, luxury cars, and properties. Through this unit, IRBM will verify whether the individual has a record of income declaration and if the wealth displayed matches that record. If there is any doubt about the record, IRBM would send a letter to them asking for clarification. Those who did not commit any offence under the IRBM Act would have nothing to worry about when sharing their wealth and luxury possessions. What IRBM is doing is not making one's life difficult or being cruel to anyone; they want to be fair to all parties, especially the taxpayers.[1001]

Furthermore, in July 2019, early initiatives of the NACP on Malaysia's Asset Declaration System to help combat corruption included mandatory asset declaration for Members of Administration (Prime Minister, Deputy Prime Minister, Ministers,

[1001] "LHDN Special Unit to Check on Show of 'Extraordinary Wealth' on Social Media," *Borneo Post Online*, http://www.theborneopost.com/2018/11/12/lhdn-special-unit-to-check-on-show-of-extraordinary-wealth-on-social-media/. (accessed December 12, 2018).

Deputy Ministers, and Political Secretaries).[1002] This motion was approved by the Dewan Rakyat, requiring all Members of Parliament to declare their assets and those of their wives or husbands, children, and trustees through a statutory declaration,[1003] under the Statutory Declaration Act, 1960. Asset declarations by Members of Administration and Members of Parliament are made accessible to the public through an asset declaration portal managed by MACC. However, MACC is the custodian of the information and will publish it on the Assets Declaration Portal within three months of receiving it (https://mydeclaration.sprm.gov.my/).[1004] Members of Parliament (MPs) who fail to declare their assets will be fined and issued a monetary punishment, which is around a RM1,000 fine. However, they could refuse to declare their assets, as there was no existing law to compel them to do so.[1005] The former MACC deputy chief commissioner (Prevention), Datuk Seri Shamshun Baharin Mohd Jamil, also stated that there is no specific law nor clear punishment for MPs who did not comply,[1006] and the MACC could not do any verification on the declaration documents received. That is why we need laws to govern the asset declaration system in Malaysia. Since money is not a concern to them, some MPS do

[1002] World Bank Group, *Enhancing Government Effectiveness and Transparency. The Fight Against Corruption* (Kuala Lumpur, Malaysia, 2020).
[1003] Azura Abas, "Liew: Mps Who Fail to Declare Assets after Dec 5 Deadline can be Suspended," *The New Straits Times*, November 2019, https://www.nst.com.my/news/government-public_policy/2019/11/542527/liew-mps-who-fail-declare-assets-after-dec-5-deadline
[1004] Akhbar Satar, "Declaration of Assets in All Branches of Govt A Huge Step Forward," *The New Straits Times*, September 2022, https://www.nst.com.my/opinion/columnists/2022/09/833569/declaration-assets-all-branches-govt-huge-step-forward
[1005] Amar Shah Mohsen, "Fine, Suspension for MPs Who Do Not Declare Assets," *The Sun Daily*, November 2019, https://www.thesundaily.my/local/fine-suspension-for-mps-who-don-t-declare-assets-BD1665892 & Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.
[1006] Akhbar Satar, "Declaration of Assets in All Branches of Govt A Huge Step Forward," *The New Straits Times*, September 2022, https://www.nst.com.my/opinion/columnists/2022/09/833569/declaration-assets-all-branches-govt-huge-step-forward

not care about the 1000 ringgit fine because they have money to pay for the penalties. Therefore, imposing monetary penalties alone will not be sufficient to get them to obey the law.

Moreover, in 2022, the previous asset declaration mechanism for members of the government administration, members of parliament (MPs), and senators was enhanced by the MACC to boost the government's credibility and integrity. A new code of ethics for MPs was introduced under the Houses of Parliament (Privileges and Powers) Act 1952. This is a valid demand because the allocation of resources and their salaries, allowances, and perks are paid from tax revenues. The importance of declaring their assets and sources of income is clear.[1007] Some ministers and deputy ministers have disclosed their assets to the MACC, and the agency has made the list publicly accessible on the MACC website. The monthly income and value of assets possessed by each individual have been revised. These figures are now divided into eight groups, ranging from under RM1 million to above RM20 million. The practice of disclosing assets among ministers and their deputies was introduced and implemented under the administration of Tun M,[1008] and it was a good move and one

Universiti Utara Malaysia

[1007] Akhbar Satar, "Declaration of Assets in All Branches of Govt A Huge Step Forward," *The New Straits Times*, September 2022, https://www.nst.com.my/opinion/columnists/2022/09/833569/declaration-assets-all-branches-govt-huge-step-forward

[1008] Adam Aziz, "MACC Asset Declaration List Shows 48 Millionaire Ministers, Deputies," *The Edge Markets*, July 2020, https://www.theedgemarkets.com/article/macc-asset-declaration-list-heres-what-it-shows (accessed 26 November 2020).

step forward by the previous government[1009] especially in a way to identify ministers who have a drastic increase in their assets after holding positions.[1010]

Generally, the progress being made is really good because previously, the stigma and perception of the public were that politicians were corrupt because they refused to declare their property, and the public believed that they had excessive property that was obtained illegally. Thus, the current move by the previous government is a good example of transparency. This indicated that, in order to enhance the accountability mechanism for the administration, the government now actually does what it says.[1011]

Additionally, in order for the asset declaration law to be implemented as a law, there must be political will from both the seated government and the opposition.[1012] According to the MACC, a study is underway to make it legally mandatory for Members of Administration, Members of Parliament, and senior public officers, including officers in government-linked companies, government-owned companies, and government investment companies, to declare their assets to the MACC.

Universiti Utara Malaysia

[1009] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020. & Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[1010] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[1011] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[1012] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.

When compared to the old asset declaration system, the latest one is better than the previous one. The improvement in asset declarations from the previous government is a kind of positive development, but of course, the old culture is still there. At least it is another step ahead towards transparency.

5.1.8 Cases of public officers failing to comply with asset declarations.

The statistics and records of public officers for not complying with the rules of asset declaration are not available under MACC because this kind of data and statistics are subject to the general order (GO) and jurisdiction of their respective departments.[1013] Besides, the Public Service Department Malaysia also does not keep any records of cases of possible illicit enrichment through the declaration of asset requirements. Breaches of financial regulations are the majority of cases that are concerned by the Public Service Department Malaysia. If there is any reasonable suspicion of bribery actions, the Public Service Department Malaysia will refer cases to MACC for further investigation. The Public Service Department Malaysia can only detect cases of illicit enrichment in the centralised Human Resources Management Information System, or HRMIS, through complaints made by a whistleblower, the Head of Department, random checks, and suspicions.[1014] However, HRMIS is not a proper system and need to be further strengthened.[1015] There is no case relating to asset

[1013] Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019.
[1014] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2016-2021.
[1015] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.

disclosure relating to Section 36, however there is a few cases of non-declaration or failure to declare assets that leading to disciplinary action and cases of non-declaration or failure to declare assets leading to criminal charges, and these cases were mentioned in a Country Review Report 2021.[1016] The case of non-declaration or failure to declare assets leading to disciplinary action can be seen in the case of ***Ramzan bin Jantan v. Timbalan Ketua Polis Johor (Deputy Chief Police Officer of Johor) & Anor***.[1017] Ramzan has failed to declare an asset in accordance with Regulation 10(1) of the Public Officers (Conduct and Discipline) Regulations 1993, and he has committed a disciplinary offence under paragraph (7) of the Schedule to the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970, punishable under the same regulations. The next case is the non-declaration or failure to declare assets leading to criminal charges, namely ***Pendakwa Raya (or PP) v. Tan Sri Muhammad bin Muhammad Taib***.[1018] Pursuant to investigations by the Anti-Corruption Agency (ACA), it was found that the defendant had not declared the following land properties registered to each in his and his wife's name, respectively. The defendant was charged with an offence under Section 25(1)(a) of the Prevention of Corruption Act 1961 (currently known as Section 36 of the Malaysian Anti-Corruption Commission Act 2009), and he was issued a notice under the same section. The court held that the notice itself, having been produced and stating clearly that it was issued pursuant to Section 25(1)(a), is

[1016] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020.
[1017] [2008] MLJU 111
[1018] [1999] MLJU 123

sufficient evidence of the existence of an investigation, and it is not necessary to proceed behind the notice unless there is evidence suggesting it was improperly or irregularly issued. However, no penalties or punishments were recorded in this case, and this case is solely about failing to declare assets, and he was charged under Section 25(1)(a) of the Prevention of Corruption Act 1961. Even though this section provides a penalty and punishment for failing to comply with the issuance of notice by the DPP, in this case, the penalty is not imposed on the defendant because a further declaration was submitted by the defendant in complying with the said notice under Section 25.

The number of cases involving failing to disclose property or living beyond one's means is relatively minimal in comparison to other forms of wrongdoing. A low or zero percentage may indicate the ineffectiveness of the system's verification and detection components, and it shows that the legislation is weak and inadequate.

Universiti Utara Malaysia

5.1.9 Challenges Arising from the Absence of an Asset Disclosure Law

Malaysia needs a specific law requiring public officers to disclose their assets because the current law on asset disclosures, regulations, and code of ethics is not enough. The effectiveness of asset disclosure and law enforcement for asset disclosure in the prevention of corruption for public officers has attracted criticism due to its inefficiency. Firstly, there is the issue of transparency. In most cases, concerned officials may provide false or inaccurate information when disclosing and

registering assets. Currently, public officers only disclose their assets to their heads of departments.[1019] Since the head of department is the only person responsible for these declarations, it is unclear how transparent they are when disclosing their assets. This is because they only disclose their assets to their employer, and there is no designated authority to scrutinise the transparency of asset declarations. Therefore, the head of department primarily depends on the information provided by the individual registering the asset and the statutory declaration that they have signed. The authority must do a further and more detailed inquiry into the amount of assets they actually own before they can determine their authenticity. However, it is impossible to conduct an investigation if there is no issue because it involves so many working public officers. There is no point in spending a lot of time investigating every single public officer if no issue has arisen. Meanwhile, for members of parliament, declarations are being made to MACC and accessible to the public. The MACC has been granted the mandate to verify the information submitted where there is sufficient ground to suspect that the information is false, incomplete, and inaccurate. Even though the mechanism for verification is provided under the Proclamation, this by itself does not guarantee the submission of accurate information,[1020] because this matter is not governed by any law.

Universiti Utara Malaysia

[1019] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[1020] Mesay Tsegaye Meskele, "The Legal Framework of Illicit Enrichment in Ethiopian Anti Corruption Law," (master's thesis, Faculty of Law, University of the Western Cape, South Africa, 2012), 31.

Secondly, the lesser penalty does not deter public officers from being transparent. Public officers are subjected to the oath and affirmation act only, so the validity and effectiveness of the statutory declaration (SD) itself are questionable because the penalty is lesser under the oath and affirmation act.[1021] The problem of not having an appropriate law for AD is that public officers do not fear breaching the SD since the penalty is not severe. As a result, they are more likely to commit more offences secretly, continue to violate the SD by failing to declare their assets, and make false declarations. Malaysia, therefore, must impose a more severe penalty by enacting a strict law and punishing those who disobey the asset declaration requirement. The law serves as a tool and a preventive measure to make sure that public officers do not commit any offences. When there is a law requiring the declaration of assets, public officers will be more careful and cautious. Therefore, prevention becomes effective when we eradicate every possibility of committing a crime, as the law serves to prevent, monitor, and eliminate all opportunities to commit crime.

Universiti Utara Malaysia

### 5.1.10 Public access to Asset Declaration and Confidentiality concerns

The UNCAC requires improving transparency in public administration (Article 10) and enabling public access to information (Articles 10 and 13). Williams[1022] argues that public disclosure is essential to an effective asset declaration system because

[1021] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.
[1022] Aled Williams, "International Experience of Asset Declarations," *Transparency International*, 2006, http://www.u4.no/publications/international-experience-with-asset-declarations (accessed September 15, 2021).

making the information available for inspection by the public reduces the potential for public officers to abuse their entrusted power for private benefit. A study conducted in 2009,[1023] indicated that countries that practiced public disclosure had lower levels of perceived corruption despite low levels of media freedom and democracy.[1024]

In Malaysia, the public is only able to access information about politicians and members of parliament's asset declarations, not information about public officers' asset declarations. Confidentiality of asset declarations made by public officers under the Public Officers (Conduct & Discipline) Regulations 1993 P.U.(A) are classified as "confidential" documents under the Official Secret Act 1972 as provided for under Regulation 10(7) read in conjunction with paragraph 28 of Service Circular 3/2002 and therefore are not made accessible to the public.[1025] An asset declaration (or statement) made pursuant to Section 36 of MACCA is also classified as a "government secret" under the Official Secret Act 1972 by virtue of a Standing Order of the Chief Commissioner made pursuant to Section 12 of MACCA.[1026] Authorities with access to such asset declarations include:

1) The heads of the Departments/Ministries of the public official concerned pursuant to Regulation 10 (1) and (2) of P.U.(A) 395

[1023] Simeon Djankov et al., "Disclosure by Politicians," *NBER Working Paper Series,* last modified 2009, http://www.nber.org/papers/w14703. (accessed May 9, 2021).
[1024] Chin Chin Hong, "Reforming the System of Asset Declaration in Malaysia as a Strategy to Combat Corruption" (master's thesis, International Anti-Corruption Academy (IACA), 2016).
[1025] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2016-2021.
[1026] Ibid.

2) The appropriate disciplinary board of the government services pursuant to Regulation 10 (3) of P.U.(A) 395

3) The MACC is also given powers under Section 36 (1) to obtain information from the official of financial interests belonging to the public official and any relative or associate of the official within or outside of Malaysia.

4) Royal Malaysia Police

5) The Director of General of Inland Revenue Board under Income Tax Act 1967.[1027]

Politicians, on the other hand, consider a variety of factors, including potential safety concerns and other dangers, when it comes to public access to their asset declaration information. Countries that establish enforcement bodies to control wealth or conflicts of interest should ensure access to the relevant databases maintained by other state institutions.

Universiti Utara Malaysia

Currently, in Malaysia, all the public can access the asset declaration information provided by politicians and Members of Parliament.[1028] Even previously, the government MPs had separately made declarations to the Malaysian Anti-Corruption Commission. So, some in the opposition have raised privacy concerns that disclosing their assets to public might put their family members at risk of extortion and kidnapping.[1029] The Minister in the Prime Minister's Department, Liew, said the matter does not arise, noting how none of the government lawmakers have faced

[1027] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2016-2021.
[1028] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[1029] Ibid.

such an issue. As of now, there have been no reported cases of extortion or kidnapping involving any of the ministers, MPs, or their family members.[1030] The risk of extortion and kidnapping is just an excuse for politicians to avoid declaring their assets. As a politician, they must show the public that they are transparent and clean. Besides, they must carry out their work with trust and integrity. The act of declaring an asset itself proves that they have not done anything wrong. [1031]

Although privacy concerns can constitute reasons for denying all private information to the Head of Department of public officials, Malaysian authorities should enhance the use of declarations to monitor conflicts of interest and hence allow the Head of Department access to relevant data only.[1032] Disclosing the asset to the public is also one way to know whether a member of parliament or a minister has so many assets or properties or not.[1033]

Universiti Utara Malaysia

Politicians and MPS should be prepared to provide explanations regarding the disclosed information, if there are any serious concerns raised in the media or by civil society. Reluctant politicians who cited privacy reasons for not disclosing their

[1030] Amar Shah Mohsen, "Fine, Suspension for MPs Who Do Not Declare Assets," *The Sun Daily*, November 2019, https://www.thesundaily.my/local/fine-suspension-for-mps-who-don-t-declare-assets-BD1665892
[1031] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.
[1032] OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption in Eastern Europe and Central Asia,* OECD Publishing, 2011, *http://dx.doi.org/10.1787/9789264095281-en*
[1033] Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020.

assets should be mindful that, as representatives of the people, they were expected to be transparent in their actions by practicing integrity at all times.[1034]

However, the current practice reveals that the asset declarations made by the aforementioned politicians or members of parliament lack specific details, as they declare their assets as a whole.[1035] As mentioned under 5.1.7, the website[1036] did not give a breakdown of a detailed analysis of the sources of income or the positions held by these MPs in groups beyond the state and federal government.[1037] The asset declaration needs to be declared and broken down into more details and should include an in-depth disclosure of all sources of income as well as a detailed account of the positions performed by the Members of Parliament (MPs), together with a breakdown of their salaries and allowances,[1038] to ensure transparency and integrity. Every elected official is responsible and obligated to respond to their voters. The people are tired of being deceived and overwhelmed by scandals concerning big businesses, public funds, and public officers. [1039]

Universiti Utara Malaysia

[1034] Fuad Nizam, "Wealth of Those in Power Should be Made Transparent with Asset Declaration Act," *The New Straits Times,* 2023, https://www.nst.com.my/news/nation/2023/04/900822/wealth-those-power-should-be-made-transparent-asset-declaration-act.
[1035] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.
[1036] "The Asset Declaration Portal," *Malaysian Anti-Corruption Commission,* https://mydeclaration.sprm.gov.my/
[1037] "Asset Declaration Law Needed for Greater Transparency," *Free Malaysia Today*, 2021, https://www.freemalaysiatoday.com/category/nation/2021/07/19/asset-declaration-law-needed-for-greater-transparency-says-ti-m/.
[1038] "Asset Declaration Law Needed for Greater Transparency," *Free Malaysia Today*, 2021, https://www.freemalaysiatoday.com/category/nation/2021/07/19/asset-declaration-law-needed-for-greater-transparency-says-ti-m/.
[1039] Ibid.

The public declaration of assets will not cause harm to anybody[1040] because one of these practices is to make full, truthful disclosures of their assets and income when required. Wealth earned from an honest life should be a source of pride, not concern.[1041]

### 5.1.11 Findings and Analysis of Research Question 2

Based on the aforementioned analysis and discussion from the respondents' data and literature review, the researcher has developed a conceptual framework on the rules pertaining to the asset declaration system that can prevent the problem of illicit enrichment, as shown below.

Universiti Utara Malaysia

[1040] Akhbar Satar, "Declaration of Assets in All Branches of Govt A Huge Step Forward," *The New Straits Times*, September 2022, https://www.nst.com.my/opinion/columnists/2022/09/833569/declaration-assets-all-branches-govt-huge-step-forward

[1041] Fuad Nizam, "Wealth of Those in Power Should be Made Transparent with Asset Declaration Act," *The New Straits Times,* 2023, https://www.nst.com.my/news/nation/2023/04/900822/wealth-those-power-should-be-made-transparent-asset-declaration-act.

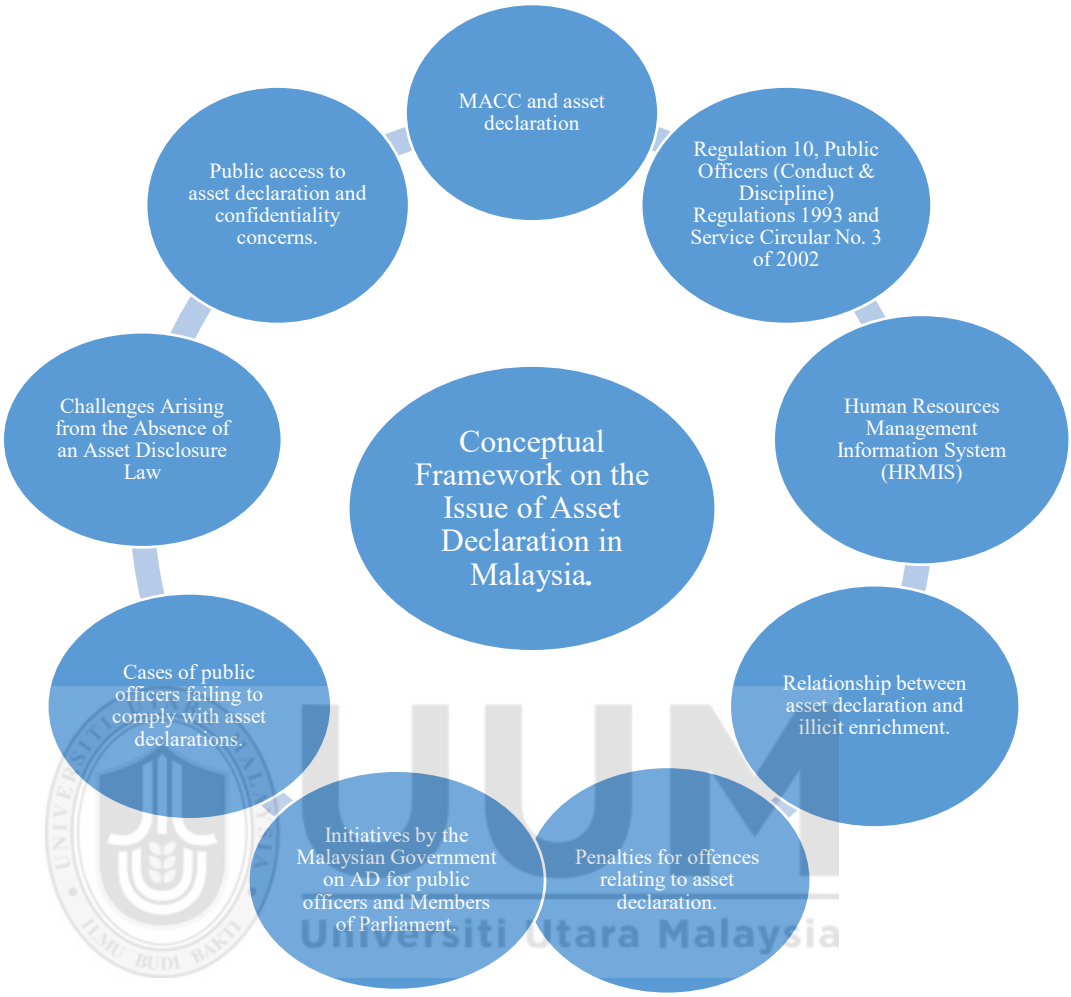



Figure 5.1.11 Conceptual Framework on the issue of asset declaration in Malaysia.

The result of the principal findings for Research Question 2 is discussed as follows: How can the rules pertaining to the asset declaration system prevent the problem of illicit enrichment? Based on the discussion of the literature review and after the data have been obtained and analysed by the researcher, the findings of this thesis have identified that the rules pertaining to asset declaration among public officers are only governed under the Code of Ethics, Public Officers (Conduct and Discipline)

Regulations 1993 (Amendment 2002) and related Government Service Circular Regulation 10. Several legal provisions, such as the Malaysian Anti-Corruption Commission Act 2009 (MACCA), Penal Code, Statutory Declarations Act 1960, Code of Ethics for Members of Parliament of Government 2004 and Judges Code of Ethics 1994, address the issue of asset declaration in Malaysia.

However, these rules and laws are not sufficient to prevent the problem of illicit enrichment in Malaysia because many of them do not include specific provisions on asset disclosure that make it compulsory for public officers, including politicians and members of parliament, to declare their assets and wealth. Once all the data was gathered and analysed, the researcher discovered that the presence law for asset disclosures in Malaysia is insufficient and scattered. When there is no such law to govern asset disclosures for public officers and Members of Parliament, they are prone to breaching the rules and regulations in asset declarations, including providing false declarations and unsatisfactory explanations, and they even fail to declare the assets.

Besides, the rules to declare assets for public officers and MPs are only governed under Section 36 of the MACCA, but the section itself does not specifically address asset declaration, and it is indirectly related to living beyond means. However, despite having this law, not all public officers and MPS comply with it due to the lighter penalty under the code of ethics, and there are no severe punishments

Universiti Utara Malaysia

imposed on those who breach the asset declaration legislation. Even though the government provides disciplinary action if public officers do not comply with the rule, those who disobey it are not subject to enforcement. The uncertainty surrounding asset declaration rules has resulted in public officers acting corruptly and having illegal wealth.

Failure to comply with the asset declaration rules can be subjected to disciplinary action under the Code of Ethics, Regulation 10, Public Officers (Conduct and Discipline) Regulations 1993, and Service Circular No. 3 of 2002, as provided under subtopic 5.1.3.[1042] However, the regulations, or the Code of Ethics itself, are insufficient because there is no specific penalty for a false declaration of assets. This is because the penalty is determined by the head of the respective department.[1043]

Furthermore, the code of ethics is not compulsory for public officers and politicians, and the current asset disclosure system is inadequate because it is not bound by any law. That is one of the weaknesses of Malaysia's asset declaration system. Even though the government is making continuous efforts to address the issue of asset disclosure, as stated in 5.1.7, it is still insufficient to prevent it if asset declaration is not made mandatory for all public officers. Since they only disclose their assets to their head of department and there is no appointed authority to examine the transparency of the asset declarations, it is unclear how transparent they are when

[1042] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020. & Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020.
[1043] Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020. & Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019.



Universiti Utara Malaysia

disclosing their assets. This is another issue related to the lack of an asset disclosure law. In fact, the power of MACC in asset declaration is limited because it is governed by the Public Service Department Malaysia. In order to increase the positive effects of declaration systems, the declared data should be available to investigators for detecting cases of possible criminal offences.

As a result, it appears that Malaysia's existing asset disclosure system is ineffective at preventing and fighting corruption, as seen by the rising number of corruption cases in the public sector. The incorporation of asset declaration laws for public officers into Malaysian law will likely improve the governance system's efficiency. Besides, the ultimate goal of this study is to advocate for redesigning Malaysia's asset declaration system to meet the following purposes: conflict of interest prevention and use as an investigative tool for discovering and prosecuting illicit enrichment.

Universiti Utara Malaysia

# CHAPTER SIX

# FINDINGS AND RECOMMENDATIONS

## 6.1 Introduction

This chapter concludes the thesis with a summary of findings, recommendations, and a final conclusion. The proposed recommendations and suggestions are suitable and viable under Section 36 of the MACCA, as well as for asset declaration in Malaysia.

## 6.2 Summary of Findings

Malaysia has several legislations to curb corruption and illicit enrichment. However, the laws addressing illicit enrichment are scattered, as illicit enrichment-related cases can be prosecuted under alternative provisions such as anti-money laundering (AMLA), abuse of power, and other statutes. When courts address illicit enrichment-related cases through alternative provisions, such as AMLA or abuse of power, the necessity of a specific IE offence depends on the effectiveness of these substitutes. Besides, as highlighted in Section 4.1.15, Section 36 has proven insufficient to prosecute IE offenders, with existing cases under this section resulting in acquittals.[1044]

[1044] Please refer to Subtopic 4.1.15 in Chapter 4.



Universiti Utara Malaysia

### 6.2.1 International Legal Frameworks to combat corruption and illicit enrichment

International experience shows that a good legal framework, coupled with the active roles of the government and anti-corruption agencies, is crucial in combating corruption and illicit enrichment within a country. As discussed in Chapter Three of this thesis, countries such as Hong Kong, Argentina, and Egypt have enacted specific IE laws to address illicit enrichment, complemented by AML provisions that enhance and align with IE legislation. Over the past two decades, several nations have introduced illicit enrichment laws, which are now recognised by international treaties such as the IACAC, UNCAC, and the European Union, among others.[1045]

As discussed in Chapter 3, there is still a lot of disagreement among practitioners about how illicit enrichment provisions should be applied. Nevertheless, these laws have been successful in several jurisdictions, and more governments are adopting them to combat corruption and crime and recover criminal proceeds. The effectiveness of the law is evident, particularly in Hong Kong.[1046]

As noted above, illicit enrichment is a controversial legal issue. That being said, based on existing legal precedents, enacting and applying laws against illicit enrichment is not automatically against established legal principles. Instead, courts in many countries have said that illicit enrichment rules are fair and effective ways to fight corruption and recover the proceeds of crime when enacted and enforced

[1045] Please refer to Subtopic 3.1 in Chapter 3.
[1046] Please refer to Subtopic 3.2.2 in Chapter 3.

reasonably. Some see it as a breach of fundamental legal norms. Introducing illegal enrichment rules in a country typically leads to a highly divided legislative debate.

The global experience with illicit enrichment so far is sparse and mixed. However, the limited available experience shows that illicit enrichment can be implemented with full respect for human rights. While it can be a useful anti-corruption tool, mechanisms and resources need to be put in place before implementation.

Therefore, the legislator must consider the broader effects of the criminal justice system in order to create a specific IE law that is more balanced. The purpose of the specific offences that the parliament passed is to emphasise the need for both punishment and denunciation. Many scholars have approved the adoption of illicit enrichment offences, stating that they are mandatory for any anti-corruption measures and recognised as tools in the comprehensive fight against corruption, strengthening the government's power to regularly monitor assets and improving transparency in the public sector. Courts in many countries justify the laws as a proportionate and appropriate response to the damaging issue of corruption.

Universiti Utara Malaysia

6.2.2 Malaysian Legal Framework to combat corruption and illicit enrichment

Generally, in Malaysia, there are a few legal provisions to curb illicit enrichment, but it seems that the law is scattered and no specific and clear provision for IE, as compared to Hong Kong. The legal provisions include AMLA, abuse of power and

predicate offences under MACCA,[1047] and IE-related cases can be charged under these alternative provisions. Existing provisions like AMLA, abuse of power, predicate offences under MACCA or the Minor Offences Act are inadequate and incapable to prosecute offenders who possess excessive wealth that cannot be directly traced to criminal proceeds, such as bribery or abuse of power. If there is no stand-alone provision against excessive wealth, offenders can continue to commit the same crime and move about without restriction. When courts address illicit enrichment-related cases through alternative provisions, such as AMLA or abuse of power laws, the necessity of a specific IE offence depends on the effectiveness of these substitutes.

While AMLA and abuse of power laws can partially address unexplained wealth or suspicious asset accumulation, they may not fully capture the unique aspects of IE. IE laws specifically target wealth that appears disproportionate to an individual's lawful income, which can fall outside the scope of AMLA or abuse of power laws that may require evidence of specific corrupt acts, financial transactions, or misuse of authority.

Furthermore, this study also found that Section 36 of the MACCA is ineffective as a form of prevention based on the number of prosecutions, analysis from data interviews with respondents, and analysis from a literature review. When referring to

[1047] Please refer to the discussion under Subtopic 2.7.1.

analysis 4.1 under Research Question No. 1, the wording of Section 36 itself primarily contributes to a weak prosecution and investigation. Furthermore, the investigation can only be triggered when there is a report under Section 36 and an investigation underway under the predicate offences of the Act. Most importantly, under Malaysia's criminal laws, there have been no legal verdicts on conviction for acts of illicit enrichment by public officers. Thus, a new law on IE can provide avenues to overcome this problem.

A dedicated IE law would offer a clear legal framework and definition, assisting prosecutors and courts in consistently addressing cases where wealth accumulation lacks a lawful explanation. This clarity would reduce ambiguity and improve conviction rates, addressing gaps that AMLA or abuse of power provisions may not fill. While AMLA and abuse of power provisions can cover some IE cases, a specific IE offence remains beneficial. It would establish a targeted approach, particularly for cases where unexplained wealth is apparent but does not directly involve money laundering or abuse of power. Therefore, Malaysia requires a specific, an independent and a stand-alone provision for IE.

If there is a specific and standalone provision for IE in Malaysia, the broken window theory[1048] could be applied to such cases. Implementing specific laws on illicit enrichment and asset declarations would serve as a deterrent, indicating to public

[1048] This theory is further discussed in Subtopic 2.6

servants that their actions are being closely monitored. Those with excessive wealth should understand that having excessive wealth is prohibited by law, as it constitutes a crime in Malaysia. Additionally, the concept of wilful blindness[1049] could assist prosecutors in illicit enrichment cases by allowing them to argue that the accused had constructive knowledge of the unlawfulness of their assets. For instance, if a defendant possesses wealth far exceeding their lawful income but deliberately avoids questioning its legality, their wilful blindness could indicate intentional avoidance of the truth. Thus, in turn, could help establish the *mens rea* necessary for prosecution.

Criminalising living beyond means is a way to strengthen the law of IE and prevent corruption effectively. Another advantage of having IE law is that at least the society can foresee the public officers with some integrity, wipe out any corrupt practices, and may create a clean society. Having the law alone is not sufficient because the culture of corruption among public officers and the public needs to be changed and stopped. The clean culture starts with the superior positions, such as head of department or director general, where they have to be transparent, honest, and have integrity. It has to start somewhere because this issue has been in the culture for so many years already,

Moreover, illicit enrichment is an indicator of corrupt offences. While it may not necessarily come from corruption, it could be a consequence of it. So, it triggers

[1049] This concept is further discussed in Subtopic 2.5

questions like, where did it come from? Is it from illegal proceeds? So, should we not criminalise illicit enrichment by looking at the relationship between corruption and illicit enrichment? The relationship serves as an indicator to corruption, in the context of criminal offences. In criminal justice, we only criminalise something if it is harmful to property or people. For example, murder is harmful to bodily injury, and theft is harmful to property (loss). Corruption and illicit enrichment are harmful to property and people,[1050] so illicit enrichment in Malaysia must be criminalised with a clear and specific provision in the MACC Act. It is recommended that Malaysia should improve the current provision of the MACC Act 2009 [Act 694] by including a specific provision that criminalises illicit enrichment in Malaysia. The Malaysian government should identify and look in depth to see if it can enhance Section 36 of the MACC Act 2009 [Act 694]. The findings of this study show that the law is not sufficient when compared to Hong Kong, and reviewing the existing law is necessary. The suggested provision under Section 10 of the Prevention of Bribery Ordinance (Chapter 201) (POBO) Hong Kong*, Possession of Unexplained Property*, may be referred to and need to be adopted.

The government's effort to prevent corruption is ineffective given the increasingly widespread cases of illicit enrichment. Therefore, more effort is needed to combat corruption and illicit enrichment in the public sector. Malaysia has some form of piecemeal law, and this is insufficient. To fight corruption, lessons from Hong Kong are important and can be followed because this country has legal and

[1050] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.

institutional mechanisms that work effectively. It also helps that the governance of Hong Kong is transparent, participatory, and accountable. The systems are in place, and those systems worked.

After conducting an in-depth analysis of this topic, the researcher concluded that the existing body of literature is unsatisfactory and inadequate. The existing literature on this topic is relatively scarce, and this thesis aims to pave the way for future discussion among researchers and identify new legal gaps related to this issue. It is hoped that this thesis will enhance the existing knowledge and understanding of the illicit enrichment issue in the context of Malaysian anti-corruption law. Additionally, it aims to evaluate the effectiveness of existing laws and international treaties in addressing illicit enrichment on a global scale.

### 6.2.3 The Legal Framework for Asset Declaration in Malaysia

Universiti Utara Malaysia

Throughout the entire discussion, it is evident that the obvious legal gap in terms of illicit enrichment in Malaysia is that there is no specific provision for it, and there is no statistical data on the case of illicit enrichment because it has not been criminalised in any law in Malaysia at the moment. However, a government circular has slightly filled the legal gap by requiring public officers to declare their assets every five years for various reasons.

As discussed in Chapter 5, Regulation 10 of the Public Officers (Conduct and Discipline) Regulation 1993 P.U. (A) 395/1993, when read in conjunction with

Service Circular No. 3 of 2002: Ownership and Declaration of Assets by Public Officers, provides the basis for making a declaration of assets or property owned by public officers. According to this regulation, public officers must submit a list of assets every five years of service, and the declarations are made electronically in the Human Resources Management Information System (HRMIS).

However, the current asset declaration system is inadequate and faces several challenges. Furthermore, it is not governed by any specific law. The failure to declare an asset falls under disciplinary action or a code of ethics only.[1051] There is no specific law in Malaysia that requires public officers to declare their assets,[1052] so officials who fail to declare their assets or make false declarations shall be subjected to disciplinary actions that are provided under the said Regulations only.[1053]

Universiti Utara Malaysia

Despite having rules and sanctions for failing to comply with the asset declaration, the code of ethics is not compulsory for public officers and politicians. All public officers should be made compulsory to declare their assets, and one way is by having a law on asset declaration. In fact, there have not been any cases of termination for

[1051] Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019. & Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020. & Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020.

[1052] Interview with Respondent 1, MACC Officer, Community Education Division, Malaysian Anti-Corruption Commission, Penang, November 26, 2019. & Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020. & Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019. & Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.

[1053] Please refer to Subtopic 5.1.6 in Chapter 5.

failure to disclose assets. Since the head of department is the only person responsible for these declarations, it is unclear how transparent they are when disclosing their assets.

If the provision and enforcement requiring public officers to declare assets is not in place, the asset declaration alone is insufficient to prevent illicit enrichment. Furthermore, the process of declaring assets by public officers must be done in a genuine and transparent manner. The relevant authority should impose a severe punishment or penalty on public officers who make false asset declarations or misrepresent them.

The research findings in subtopic 5.1.11 specifically examine the issues and challenges encountered within Malaysia's current asset declaration system, which weakens its effectiveness. No specific and independent body is responsible for implementing and enforcing asset declarations by public officers. Different sets of administrative rules and codes are applied to different categories of public officers. The codes that govern asset declarations by Members of Parliament and high-level judges must provide mechanisms for verification, monitoring, and so on. Likewise, weak system verification and monitoring have resulted in a low number of cases of failure to declare assets under the existing administrative regulations. Failure to declare assets has also resulted in no cases of sanctions for those public officers living beyond their means.

Universiti Utara Malaysia

The purpose of enacting a specific asset declaration law, which mandates asset disclosure and criminalise illicit enrichment, is to prevent holders of public office from exploiting their positions to obtain illegal gains or profits. The criminalisation will also require public officers to declare their assets, and any unusual increase in the wealth of a public officer will be presumed to have resulted from the commission of an offence unless sufficient evidence is produced to the contrary. The asset declaration law will effectively fill the legal gap, but it is not enough when illicit enrichment has not been criminalised in a way to combat corruption in Malaysia. The proposed recommendation outlined below involves introducing a new law for the asset declaration system in Malaysia.

## 6.3 Recommendations

Malaysia must enact laws on illicit enrichment and asset declarations to address existing loopholes, as the absence of such laws can provide public servants with opportunities to illegally accumulate wealth. The accumulation of excessive, unexplained wealth could result in a rise in corruption among public servants, as it reduces accountability and encourages the abuse of power.

Basically, checking the substance and compatibility of AML law in Malaysia is crucial before proposing a new section to the current illicit enrichment law. It is crucial for several reasons, firstly, to ensure the consistency and effectiveness within the legal framework. Assessing the relationship between illicit enrichment and

AMLA is important to avoid legal conflicts and overlaps because IE and money laundering are interconnected, as unexplained wealth may result from illegal activities involving laundering. Secondly, amending one law without considering the other might lead to conflicts, such as contradictory definitions, procedures, or enforcement mechanisms. Aligning the laws helps prevent situations where one law undermines or duplicates the functions of another. Thirdly, harmonizing provisions aids in streamlining enforcement, reducing confusion, and enabling authorities to work collaboratively. This alignment also promotes legal certainty. Fourthly, amending one law can unintentionally other laws or policies. Conflicts or unnecessary overlaps between laws can create confusion among enforcement agencies, courts, and the public.[1054]

Thus, by considering the relationship between illicit enrichment and AML provisions, the researcher can propose amendments that strengthen Malaysia's overall framework for combating financial crimes, ensuring that both laws work together effectively rather than conflicting with each other. Ensuring compatibility demonstrates a commitment to good governance and the rule of law.

[1054] Please also refer to the discussion in Subtopic 3.2.2 on the AML law in Hong Kong

6.3.1 The Legal Framework for Illicit Enrichment

6.3.1.1 Enhance and revise Section 36 of the MACCA by including specific provisions addressing illicit enrichment, with reference to Section 10 of POBO Hong Kong: approach for drafting an offence.

In Chapter 3, while addressing Research Question No. 3,[1055] this research draws upon the provisions of illicit enrichment from Hong Kong as a source of reference. After reviewing the data from the respondents and conducting an analysis, Malaysia should enhance and strengthen Section 36 of the MACCA to reflect Hong Kong's provision on illicit enrichment and include it as a specific offence under Section 36A. According to Respondent 10, living beyond means needs to be criminalised,[1056] and creating a uniform law to prevent illicit enrichment that combines AMLA, forfeiture, and MACC in one section will simplify the investigation and prosecution process.[1057] According to the findings of this thesis, the law of illicit enrichment is scattered and currently in bits and pieces everywhere, where it can be found under the MACC Act 2009, the Anti-Money Laundering, Anti-Terrorism Financing, and Proceeds of Unlawful Activities Act 2001 (Act 613) (AMLATFPUAA), the Penal Code, the Forfeiture of Property, Minor Offences Act 1955 (Act 336), and any other related laws and regulations.[1058] Furthermore, Respondent 8 agreed as a legal practitioner that IE must be criminalised as a

[1055] Please refer to subtopic 3.4 of this thesis.
[1056] Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020.
[1057] Ibid.
[1058] Please refer to the problem statement of this thesis.

specific offence in Malaysia.[1059]

To provide legal clarity, this thesis proposes the new Section 36A, which must be read in conjunction with the existing Section 36 of the MACCA. Below is the newly inserted law, adopted from Section 10 of the POBO Hong Kong. The proposed Section is Section 36A, to be read together with section 36.

Therefore, Table 6.3.1.1 shows the current Section 36, while Table 6.3.1.2 presents the newly proposed Section 36A. As discussed under Subtopic 3.4 in Chapter Three, the proposed section for illicit enrichment in Malaysia is based on Section 10 of the POBO in Hong Kong. The table aims to highlight the differences between the current and proposed versions, providing the reader with a clearer understanding of the changes.

Table 6.3.1.1: The current Section 36 of the MACCA.

| **THE CURRENT SECTION 36** |
|---|
| Section 36 of the MACCA:<br>Powers to obtain information - |
| Section 36 (1)<br><br>"Notwithstanding any written law or rule of law to the contrary, if an officer of the Commission of the rank of Commissioner and above has reasonable ground to believe, based on the investigation carried out by an officer of the Commission, that any property is held or acquired by any person as a result of or in connection with an offence under this Act, may by written notice"-<br><br>"Section 36 (1) (a) require that person to furnish a statement in writing on oath or affirmation -<br>(i) to identify every property, whether movable or immovable, whether within or |

[1059] Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020. & Interview with Respondent 10, Criminal Lawyer, Penang, December 31, 2020.

outside Malaysia, belonging to him or in his possession, or in which he has any interest, whether legal or equitable, and specifying the date on which each of the properties so identified was acquired and the manner in which it was acquired, whether by way of any dealing, bequest, devise, inheritance, or any other manner;
(ii) identifying every property sent out of Malaysia by him
(iii) Setting out the estimated value and location of each of the properties

(iv) Stating in respect of each of the properties whether the property is held by him or by any other person on his behalf, whether it has been transferred, sold to, or kept with any person
(v) setting out all other information relating to his properties, business, travel, or other activities
(vi) setting out all his sources of income, earnings or assets."

"Section 36 (1) (b) i, ii, iii, iv, v, vi
require any relative or associate of the person or any other person whom the officer of the Commission of the rank of Commissioner and above has reasonable grounds to believe is able to assist in the investigation, to furnish a statement in writing on oath or affirmation - to identify every property, whether movable or immovable, whether within or outside Malaysia, belonging to him or in his possession, and how the properties was acquired, setting out all other information relating to each of the properties and setting out all his sources of income, earnings, or assets."

"Section 36 (1) (c) - require any officer of any bank or financial institution, or any person who is in any manner or to any extent responsible for the management and control of the affairs of any bank or any financial institution, to furnish copies of any or all accounts, documents and records relating to any person to whom a notice may be issued under paragraph a and b."

"Section 36 (2) – Any person to whom a notice is sent by the officer of the Commission of the rank of Commissioner and above, wilfully neglects or fails to comply with the terms of the notice, commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years and to a fine not exceeding one hundred thousand ringgits."

"Section 36 (3) – Where the officer of the Commission of the rank of Commissioner and above has reasonable grounds to believe that any officer of a public body who has been served with the written notice, owns, possess, controls or holds any interest in any property which is excessive, having regard to his present or past emoluments and all other relevant circumstances, such officer of the Commission may by written direction require him to furnish a statement on oath or affirmation explaining how he was able to own, possess, control or hold such excess and if he

| |
|---|
| fails to explain satisfactorily such excess, he commits an offence and shall on conviction be liable to -<br><br>Punishment –<br>a) imprisonment for a term not exceeding twenty years; and<br>b) a fine which is not less than five times the value of the excess, if the excess is capable of being valued, or ten thousand ringgits, whichever is the higher."<br><br>"Section 36 (4) – every person who neglects or fails to comply with such direction, he commits an offence and shall onconviction be liable to<br>a) imprisonment for a term not exceeding twenty years; and<br>b) a fine which is not less than five times the value of the excess, if the excess is capable of being valued, or ten thousand ringgits, whichever is the higher."<br><br>"Section 36 (5) - Every person to whom a notice or direction is sent by an officer shall be legally bound to state the truth and shall disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him."<br><br>"Section 36 (6) - Where any person discloses an information or produces any accounts, documents or records, in response to a notice under subsection (1), such person, his agent or employee, or any other person acting on his behalf or under his direction, shall not, by reason only of such disclosure or production, be liable to prosecution for any offence under or by virtue of any law, or to any proceeding or claim by any person under or by virtue of any law." |

Universiti Utara Malaysia

Table 6.3.1.2: The newly proposed Section 36A to be read together with the current Section 36 of the MACCA.

| **THE NEWLY PROPOSED SECTION 36A** |
|---|
| Section 36 of the MACCA**:**<br>Possession of unexplained property– |
| Section 36 (1)<br><br>"Notwithstanding any written law or rule of law to the contrary, any person who is, or has been, an officer of a public body"[1060] |

[1060] "Officer of a public body" under Section 3 of the MACCA means any person who is a member, an officer, an employee or a servant of a public body, and includes a member of the administration, a member of Parliament, a member of a State Legislative Assembly, a judge of the High Court, Court of Appeal or Federal Court, and any

"Section 36 (1) (a) maintains a standard of living above that which is commensurate with his present or past official remuneration"[1061]; or

"Section 36 (1) (b) is in control of pecuniary resources[1062] or property[1063] disproportionate to his present or past official remuneration, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, shall be guilty of an offence."

"Section 36 (2) - The court in determining whether the accused has given a satisfactory explanation as provided in that subsection, shall take into account assets that he declared, and an officer of the Commission of the rank of Commissioner[1064] shall disclose to a court information about accused's assets declaration."

"Section 36 (3) – In the context of proxy[1065] or beneficial ownership,[1066] where a court is satisfied in proceedings for an offence under subsection 36 (1)(a)(b) and (2) that, having regard to the closeness of relationship between the relative or associate between the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused. And the court shall command the relative or associate to furnish a statement in writing on oath or affirmation in the court to identify each of the properties and setting out all his sources of income, earnings, or assets."

Universiti Utara Malaysia

person receiving any remuneration from public funds, and, where the public body is a corporation sole, includes the person who is incorporated as such.

[1061] "Remuneration" under Interpretation Article 160 of the Federal Constitution includes salary or wages, allowances, pension rights, free or subsidized housing, free or subsidized transport, and other privileges capable of being valued in money.

[1062] Pecuniary resources include every property, whether movable or immovable, whether within or outside Malaysia, belonging to him or in his possession, and how the properties were acquired, setting out all other information relating to each of the properties and setting out all his sources of income, earnings or assets.

[1063] "Property" under Section 3 of the MACCA means real or personal property of every description, including money, whether situated in Malaysia or elsewhere, whether tangible or intangible, and includes an interest in any such real or personal property.

[1064] Chief Commissioner" under Section 3 of the MACCA means the Chief Commissioner of the Malaysian Anti-Corruption Commission appointed under section 5 of the same Act.

[1065] The meaning of proxy is defined by Cambridge University as "authority given to a person to act for someone else, authority given to someone to act for you and a written document that officially gives someone the authority to do something for another person."

[1066] According to legal definition of beneficial ownership by Henry Campbell Black, Black's Law Dictionary, cited in (Garner, 2009), "Beneficial ownership" is a beneficiary's interest in trust property. It is enjoyed by anyone who has the benefits of ownership of a Security (finance) or property, and yet does not nominally own the asset itself, meanwhile, Financial Action Task Force (FATF), defines beneficial ownership as "the natural person(s) who ultimately owns or controls the customer and or the person on whose behalf a transaction is being conducted."

"Section 36 (4) - Any person who is charged under section 36 (1a), (1b), and wilfully neglects or fails to comply with the provision of asset declaration under 36 (2) commits an offence."

"Section 36 (5) - Every person shall be legally bound to state the truth and shall disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him."

"Section 36 (6) - Penalty for offences having unexplained property

Subject to subsection 1 (a) and (b), any person guilty of an offence under this part, shall on conviction be liable to –

(a) imprisonment for a minimum of two years, and a maximum of twenty years; and

(b) a fine which is not less than five times the value of the excess, if the excess is capable of being valued, or fifty thousand ringgits, whichever is the higher."

"36(6) (c) In addition to the penalty imposed under subsection 36 (6), where a person is convicted on indictment of an offence under section 36 (1) (a) and (b), the court may, order the forfeiture of assets[1067] or any pecuniary resources or property that were found at the trial to be in his control."

Universiti Utara Malaysia

"36 (6) (d) In any prosecution for an offence under this Act, the court shall make an order for the forfeiture of any property which is proved to be the subject matter of the offence or to have been used in the commission of the offence where –

(a) the offence is proved against the accused; or
(b) the offence is not proved against the accused, but the court is satisfied –
    (i) that the accused is not the true and lawful owner of such property; and
    (ii) that no other person is entitled to the property as a purchaser in good faith for valuable consideration."

"Section 36 (7) - Penalty for a subsequent offence under Section 36 (4), Every person who wilfully neglects or fails to comply with the rules of asset declaration under Section 36 (2) commits an offence and shall on conviction be liable to -

[1067] "Forfeited" under Section 3 of the Interpretation Acts 1948 and 1967 means forfeited to the Government of Malaysia or, in a case where forfeitures are assigned to a State by the Federal Constitution as items of revenue, forfeited to the Government of the State in question.

(a) imprisonment for a minimum of one year and a maximum of not exceeding five years and
(b) a fine for a minimum of ten thousand ringgits and not exceeding one hundred thousand ringgits."

The main objective of developing regulatory legal framework for drafting offences for illicit enrichment is to fight corruption by conveying a clear message to society that unexplained wealth is believed to be a consequence of corrupt activities. Drafting and adding "living beyond means" to a legal provision is a good move for public officers. Besides, the newly proposed provision can serve as a lifeline in cases where Malaysia lacks strong evidence to prove a public official's involvement in corrupt activities. The fact that he has excessive wealth alone is adequate grounds for prosecution to file charges in court. When there is a specific law on illicit enrichment, the public officer will automatically beware of this crime. What has been working on improvising the current Section 36 is a good thing to make the public officer aware of the crime.

So basically, according to the new recommended illicit enrichment law, the prosecution has merely to prove that the accused person did receive a bribe as an inducement to show favour under Section 19(2) of the MACCA.[1068] There is no requirement to prove that the accused actually showed favour by receiving a bribe. So, this proceeding under Section 19 can be a precedent and applied to the new

[1068] Section 19 of the MACCA: Acceptor or giver of gratification to be guilty notwithstanding that purpose was not carried out or matter not in relation to principal's affairs or business.



Universiti Utara Malaysia

recommended Section 36. It can also serve as a supporting justification for Section 36, as the prosecution only needs to demonstrate that the accused is living beyond their means rather than proving that they received bribes.

By scrutinising their asset declarations and anything unusual with the asset declarations, unless the contrary is proved, the accused can prove that his property is from legitimate sources of wealth. Any case of the increase in wealth of public officers can be considered some sort of illicit enrichment if you can see the pattern whereby a person's wealth increases when he holds that post, and maybe there are elements of illicit enrichment that can be inferred. It is important for the prosecutor to focus on the investigation and see their lifestyle before and after they hold the position.[1069] Having a specific law is a way to warn public officers against having excessive wealth beyond their means, and the burden of proof is enough just by proving that the accused has excessive wealth to be charged in court. In contrast to Section 36, which requires the prosecution to serve notice first and involves a time-consuming serving process, the current law essentially hinders the prosecution's ability to demonstrate the burden of proof to the court, as discussed in Chapter 4. The new recommended Section 36A should be implemented and enforced by the MACC. With the hope that this specific IE law will make it easy to prove for prosecution.

[1069] Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.

Besides that, the researcher has also emphasised that the newly proposed Section 36A is important to address proxy and beneficial ownership issues. Beneficial ownership, or proxy, is a significant and closely related problem in illicit enrichment crimes, as covered in 4.1.13. Thus, the law of IE will be effective in combating IE offenders with the addition of this important aspect in the new section and can also increase the likelihood of an effective prosecution in IE cases. The proposed recommendation to the issue of beneficial ownership and proxy has also been discussed under subtopic 6.3.2.4, which is viable to implement in preventing IE.

The amendment to the existing law is important to prevent white-collar crimes because they are more brutal than violent crimes. The actions of one or a few corrupt public officers can affect the livelihoods of thousands, even millions, of people.[1070] Therefore, Malaysian law should review and enhance the existing penalties by imposing severe punishments in terms of imprisonment and fines, sending a clear message to potential offenders. Severe punishment should be meted out to those convicted of corruption to make them repent.[1071] Punishment must always serve as a deterrent in order to prevent repeat offences and warn offenders that engaging in criminal activities does not provide any benefits or rewards. Notably, both the public and individuals who have committed crimes commonly

[1070] Akhbar Satar, "Impose Severe Penalties for Corruption Offences," *Malaysia Kini,* December 2014, https://www.malaysiakini.com/letters/284379

[1071] Bernama, "Revise Anti-Corruption Laws, Impose Harsher Penalties – Experts," *The New Straits Times*, September 2022, https://www.nst.com.my/news/nation/2022/09/835054/revise-anti-corruption-laws-impose-harsher-penalties-experts

believe prison is the most severe and significant type of punishment for illegal activity. The section should be strengthened by imposing a higher fine and mandatory imprisonment to prevent "repeat offenders."

The Malaysian Anti-Corruption Commission (MACC) Act 2009 provides that any corruption-related offence carries a maximum prison sentence of 20 years and a fine of at least five times the amount of the bribe or RM10,000, whichever is higher. However, the Act does not specify the minimum term, leaving it to the judge's discretion.[1072] The penalty should be more severe, and it is suggested that the minimum jail term be increased to not less than two years and a maximum of 20 years. In addition, the minimum fine should also be raised to RM50,000 from RM10,000, adding that the "not less than five times the sum of the gratification" and "whichever is higher" clauses should be retained.[1073] Furthermore, there is an additional penalty for the new proposed section, which is forfeiture of assets. The forfeiture of assets is necessary because they were used or obtained in violation of the law. The proposed section on illicit enrichment law not only punishes those offenders, but also deals with the recovery of assets acquired through illegal means. Recovering assets acquired through illicit enrichment is crucial for recovering illicit proceeds.

Universiti Utara Malaysia

[1072] Bernama, "Revise Anti-Corruption Laws, Impose Harsher Penalties – Experts," *The New Straits Times*, September 2022, https://www.nst.com.my/news/nation/2022/09/835054/revise-anti-corruption-laws-impose-harsher-penalties-experts
[1073] Ibid.

An amendment to Section 36 of the MACCA was also recommended and suggested by the Centre to Combat Corruption and Cronyism (C4). The C4 Centre, together with the Bar Council and other civil society groups, had earlier insisted on an amendment to strengthen Section 36 of the MACCA. The improvements to Section 36 must include the issue of possessing unusual or unexplained wealth as a cause for a probe and not only rely on a commission of an offence under the MACCA. Possessing unexplained wealth is a crime under the Prevention of Bribery Ordinance (Chapter 201) (POBO) in Hong Kong, and it is stated clearly under their law.[1074] The proposed improvement to Section 36 of the MACCA will further strengthen the power of the MACC to inspect corrupt activities, particularly the possession of unusual or unexplained wealth. This action is important to strengthening the MACC's main responsibility to address and deal with corruption, especially in public office and in high ranks of power.[1075]

Universiti Utara Malaysia

The courts should consistently impose severe penalties without bias in corruption and illicit enrichment cases. When corrupt individuals believe they can avoid severe punishment, they are more likely to take the opportunity to commit corrupt activities. It is necessary to impose the maximum possible sentence to prevent others from engaging in corruption. The message must be loud and clear: the consequences one will face if one continues to engage in corruption.

[1074] Bernama, "Revise Anti-Corruption Laws, Impose Harsher Penalties – Experts," *The New Straits Times*, September 2022, https://www.nst.com.my/news/nation/2022/09/835054/revise-anti-corruption-laws-impose-harsher-penalties-experts

[1075] Cynthia Gabriel, "For Tracking Unexplained Wealth, C4 Recommends Tightening of MACC Act," *Malaysia Kini*, 2017, https://www.malaysiakini.com/letters/379694.

6.3.1.2 Include a clear and specific definition of illicit enrichment under Malaysian law, ensuring alignment with international conventions.

In order to criminalise IE and make it an offence, Malaysia first has to come up with an IE definition. As discussed thoroughly in subtopic 4.1.14 under Chapter 4, Malaysia needs a specific definition of IE to provide legal clarity for the law. The legal clarity of a law plays a crucial role in enabling people to understand what the law requires them to do or refrain from doing, as well as in promoting awareness of this law among public officers.

Many countries use different terms to define and describe illicit enrichment in their legislation; however, it is important to note that there is no consistently applied definition of illicit enrichment around the world, and its application is subject to significant differences across jurisdictions. Despite the fact that the UNCAC offers some guidance on the subject of illicit enrichment, the language of Article 20 cannot be regarded as a universally applicable definition of IE, given that numerous nations with legislation on IE have adopted diverse approaches when defining the concept of IE within their respective jurisdictions. The legal definition of 'illicit enrichment' varies by jurisdiction, with various characteristics constituting the scope of the offence in that country.

Due to the diversity of language and terminology used across different legal contexts, the term 'illicit enrichment' is not explicitly used within the laws examined in this study, instead, other terminology such as 'possession of

Universiti Utara Malaysia

unexplained wealth' or 'unexplained property' is normally found.[1076] The different terminology used indicates similar concepts related to unexplained wealth. As a result, this thesis proposes and recommends the basic definition of IE from the UNCAC provision, which describes the act of IE as follows:

> "*When committed intentionally, illicit enrichment is a crime, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income."*

The term "illicit enrichment" or "possession of unexplained wealth" should be applicable under Malaysian law and incorporated into the interpretation and definition of "gratification" in Section 3 of the MACC Act. This definition must be applied in line with Malaysian constitutional values, taking into account the specific interpretation of jurisdiction and the extent to which Malaysian legislation defines 'assets and 'income'. Besides, the individuals who could be held responsible for committing acts of illicit enrichment under the said definition target acts applicable to and committed by public officers only. Since Malaysia would adopt and use the Hong Kong IE law, the term IE will be referred to as 'possession of unexplained property,' similar to Section 10 of POBO Hong Kong. The offence of illicit enrichment must be included in the list of corruption offences or gratification under Section 3 of the MACCA.

[1076] Please refer to Chapter 3, Subtopic 3.2: Regulatory legal frameworks for illicit enrichment worldwide and other countries' experiences with the offence of illicit enrichment, where the terms of IE used by some countries are terminologically different but carry similar concepts related to IE.

Based on the observation in the Country Review Report of Malaysia by the United Nations Office on Drugs and Crime in 2013,[1077] the report did not indicate or convey whether Malaysia has successfully or sufficiently implemented the provisions of IE into its law. Malaysia does not have constraints regarding its Constitution or fundamental principles of its legal system to criminalise illicit enrichment, because during the country visit, the specific manner in which Malaysia has criminalised illicit enrichment was discussed. The reviewing experts suggested that Malaysia could potentially consider eliminating the prior investigation requirement, allowing for the implementation of Section 36 measures regardless of any ongoing investigations into other corruption offences. But as of 2023,[1078] Malaysia still has not made IE a specific offence under MACCA. Even though Malaysia has no constraint to implement Article 20 of the UNCAC, it is now time for Malaysia to enhance the current Section 36 and criminalise living beyond means. The current status of using alternative provision such as AMLA is untenable,[1079] even though according to the findings of this research, Respondents 4, 5, 6 and 8 claimed that Malaysia do not need any more illicit enrichment law in Malaysia because we have similar law of illicit enrichment which is Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) (AMLATFPUAA), Penal code, Section 40 & 41 of MACC Act - Forfeiture of property, Section 29 of Minor Offences Act 1955 and Public Officers

[1077] United Nations Convention against Corruption, *Country Review Report of Malaysia*, 2013.
[1078] Please refer to the National Anti-Corruption Plan 2019-2023 by National Centre for Governance, Integrity and Anti-Corruption (GIACC).
[1079] Findings chapter 4.1.15 provides a thorough discussion of the inadequacy of the alternative provisions.

(Conduct and Discipline) Regulations, however, based on the findings in subtopic 4.1.15 of this thesis, other countries such as Hong Kong,[1080] Argentina[1081] and Egypt[1082] also have Anti Money laundering in their provisions and specific provisions on illicit enrichment. Thus, this shows the necessity for a distinct law that distinguishes illicit enrichment from AMLA and raises the question of why Malaysia requires an independent and stand-alone illicit enrichment law in the first place, which is discussed below.

Firstly, AMLA is a crime derived from the proceeds of an unlawful activity and the illicit origins of money derived from crimes such as fraud and cheating, financial terrorism, black market trading, drug trafficking, theft or embezzlement of public funds, and others. In contrast, illicit enrichment primarily focuses on crimes caused by corrupt offences. The scope of AMLA is considerably wider than that of illicit enrichment, therefore, it could come from any illegal source. Secondly, the findings of this thesis demonstrated that there is no specific illicit enrichment law in Malaysia, with all cases related to illicit enrichment falling under the jurisdiction of AMLA.[1083] Thus, Section 36 is insufficient, which is why AMLA is the alternative and acts as a replacement for Section 36 and illicit enrichment.[1084] With the criminalisation of

[1080] The Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap.615) (AMLO)
[1081] Law 25.246 (also known as "AML Law")
[1082] Anti Money Laundering (AML) Law No. 80 of 2002.
[1083] Interview with Respondent 10, Criminal Lawyer. (December 31, 2020)
[1084] Interview with Respondent 8, Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Penang, May 6, 2020. & Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.

illicit enrichment law, the focus will be specific to corrupt offences among public officers only.

Returning to the previous justification for why it is critical to implement a clear definition of IE in Malaysia's legal framework, the absence of a precise definition of IE is associated with the *mens rea* issue, which refers to the mental state or intent required for a crime. Both the *mens rea* and *actus reus* must be present and consistent for the establishment of a criminal charge. However, without a clear definition of illicit enrichment, it becomes challenging for the court to determine whether the necessary mental intent, or *mens rea,* exists. In essence, without a defined concept of illicit enrichment, it is difficult for the court to ascertain whether the actions of the accused meet the criteria for criminal liability. Therefore, implementing a clear definition of illicit enrichment is crucial for ensuring consistency and clarity in legal proceedings related to corruption or illicit enrichment offences. Some recommendations for how to prove *mens rea* for the crime of IE include using the doctrine of "wilful blindness,"[1085] in which the law treated the '*mens rea'* as knowledge. For example, in the case of Najib,[1086] the *mens rea* element of the offence under Section 4(1), as specified in Section 4(2) of the AMLATFPUAA, had been proven by the prosecution beyond reasonable doubt, warranting the application of the doctrine of 'wilful blindness' against Najib. Notwithstanding the finding of wilful blindness, the defence failed to cast any

[1085] The concept of wilful blindness can act as a substitute for *mens rea*, which has been thoroughly explained in subtopic 2.5, Chapter 2.
[1086] Public Prosecutor v Dato' Sri Mohd Najib Bin Abdul Razak [2020] MLJU 1254; [2020] 11 MLJ 808

reasonable doubt on the prosecution's case that Najib knew that the RM42 million originated from the SRC.

The legal principle related to the prosecution of individuals in cases where proceeds are derived from unlawful activities is that if the proceeds are determined to come from one or more unlawful activities, the prosecution is not required to prove that these proceeds are specifically linked to a particular unlawful activity.[1087] Furthermore, a person may be charged and convicted of an offence related to these proceeds regardless of whether there has been a conviction for a serious offence, whether domestic or foreign, or if prosecution has been initiated for such an offence. In other words, even without a formal conviction or prosecution for a serious offence, individuals can still face charges and convictions based on the evidence of illegal proceeds they possess or have been involved in. Therefore, the legal concept entails holding individuals accountable for their involvement in proceeds from unlawful activities, even in the absence of direct evidence linking these proceeds to specific criminal acts.[1088]

Universiti Utara Malaysia

Professor Glanville Williams described the situation and doctrine of wilful blindness as follows: "He suspected the fact, realised its probability, but refrained from obtaining the final confirmation because he wanted, in the event, to be able to deny

[1087] Section 4(3) of the Anti-Money-Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.
[1088] Ibid.

knowledge." This, and this alone, is wilful blindness. Indeed, wilful ignorance is no longer bliss in the context of an anti-money laundering framework. It is no longer a practical choice. It shows signs of criminal intent.

Therefore, the prosecution may employ and refer to the doctrine of wilful blindness as a means of proving the *mens rea* of an accused in the case of illicit enrichment. If the accused has been charged with living beyond his means and is unable to explain the sources of his excessive wealth, the court may apply the doctrine of "wilful blindness" to the accused by taking into account all the relevant circumstances and charging him with the offence.

Even though there are some concerns and issues regarding the definition of illicit enrichment, Malaysia should consider adopting a definition based on Hong Kong's illicit enrichment law, ensuring it aligns with international standards, upholds our constitutional values, and meets our national standards. Similar to corruption, many countries criminalise it, despite the lack of a universally accepted definition. Although there is no definition of IE under Malaysian law, this research is nevertheless subject to criticism since it addresses a brand-new legal issue.

Universiti Utara Malaysia

### 6.3.2 The Legal Framework for Asset Declaration

#### 6.3.2.1 Introduce a comprehensive asset declaration law mandating public officers to declare their assets.

Asset declaration requires all public officers to declare their income, assets,

liabilities, and financial interests. The requirement to declare an asset is one of the measurement tools and parameters that can help prevent corruption and illicit enrichment. A country's anti-corruption and integrity systems may benefit from having an effective and functional system of asset declarations.

Since there is a relationship between illicit enrichment offences and asset declarations, the declaration of assets is made to show that a public officer's money, wealth, and property are not the proceeds of crime.[1089] So, one straightforward and practical approach is to shift the burden to public officers by mandating that they declare their assets and undergo a thorough examination, thereby increasing the difficulty of engaging in corruption. All high-ranking government officials, such as Members of Parliament (MPs) and ministers, are required to annually declare their wealth and properties.[1090] It is crucial to disclose their assets both before and after assuming their positions, allowing for the tracking of asset growth after resignation.[1091]

The compulsory obligations to declare assets should be implemented for all levels of officers because nowadays, all levels of public officers are exposed to the chance of giving and taking bribes, regardless of their rank. There should not be any discrimination under the laws, and all asset and income declarations must be transparent. According to Shamshun Baharin Mohd Jamil,[1092] an effective asset

[1089] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.
[1090] Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020.
[1091] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[1092] Shamshun Baharin Mohd Jamil, *Asset Declaration in Malaysia*, 2018.

declaration system should cover all members of the executive, legislative, and judicial branches, as well as those from the bureaucracy; this is because, as of now, no clear punishment could be imposed against those who fail to declare their assets and income. There is no clear punishment for MPs who do not comply, and there was no specific legislation regarding asset disclosure, and the MACC was unable to verify the documents submitted for declaration.

As discussed under the problem statement, there were cases where low-ranking public officers were living beyond their means, and it is getting worse by the day. An asset declaration law needs to be imposed to enforce the obligations of public officers to disclose their assets, which include high-ranking officers, high-ranking elected and political appointees, judges, and national and local authorities. So, no public officer should be exempt from declaring assets, and all levels, including the middle and lower ranks of public officers, should be treated the same and follow the same law. However, due attention should be paid to public officers who are of high rank and have the decision-making authority and managerial powers of officials, as well as the related risks of conflict of interest and abuse of office or power.

Besides, the advantages of having a specific illicit enrichment law like Hong Kong are good because the law requires and makes it compulsory for public officers to declare assets.[1093] The advantages are, firstly, having an asset declaration law can improve ways to increase the effectiveness of asset declaration in Malaysia by

[1093] Interview with Respondent 5, Senior Assistant Commissioner, Operation Target Branch, Anti-Money Laundering (AML) Division, Malaysian Anti-Corruption Commission, Putrajaya, January 24, 2020.

promoting transparency and fighting corruption in public administration because it is preventive in nature, by monitoring the entire system of asset declarations. Secondly, by enforcing a law requiring disclosure, public officers will become more careful and cautious. According to the criminology theory known as "the broken windows theory,"[1094] crime occurs when there is a chance or opportunity.[1095] Therefore, prevention works when we close all those opportunities for committing a crime, as the law is needed to prevent, monitor, and eliminate all the chances to commit the crime in question. Implementing the law will pre-empt all opportunities from the beginning, and the government must make sure there is a watchdog[1096] when they impose compulsory obligations to declare assets. In fact, having a law to disclose assets is like a soft reminder that you are watching them. There should be nothing to hide if they are clean and honest. Compelling all three branches of government to declare their sources of income, assets, debts, and financial interests is a huge step forward in the government's efforts to uphold the principles of honesty, transparency, and integrity.

It remains debatable whether a single declaration system should apply to all branches of power, including legislative, executive, and judiciary, as well as all levels of officials, from ministers to ordinary public officers. Recognising that various categories of public officers have different levels of responsibility and

[1094] Chapter two, subtopic 2.6, provides a detailed discussion of the broken windows theory.
[1095] James Q. Wilson and George L. Kelling, "Broken Windows: The Police and Neighborhood Safety," *The Atlantic Monthly* 249, no. 3 (1982): 29–38.. & Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[1096] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020. & Interview with Respondent 4, Deputy Public Prosecutor, Attorney General Chamber, Putrajaya, January 21, 2020.



Universiti Utara Malaysia

power, as well as the chance of being corrupt or involved in conflicts of interest, countries should consider making separate rules about asset declarations for these different types of public officers. However, the primary purpose must be preserved, which is to legislate the law of asset declaration and oblige all individuals to declare their assets.

A specific law is important, and mechanisms for asset declaration need to be improved. In 2021, Transparency International Malaysia will be the second to recommend such a law after the MACC. It is recommended that, under the new act, it will be compulsory for elected representatives and senators to declare their assets, income, and other relevant financial information in a public registry, which will be publicly available and updated on a regular basis. However, the asset disclosures made by some Cabinet members on a public portal administered by the Malaysian Anti-Corruption Commission (MACC) are not legally binding, those in positions of authority can easily remove them at any time.[1097] Transparency International Malaysia president, Dr. Muhammad Mohan, called on the government to compel all members of parliament (MPs) to declare their assets to the MACC. As previously raised, the government should advocate for the introduction of a bill in Parliament, such as the Asset Declaration Act or other similar laws, to mandate that all elected MPs and appointed senators disclose their assets, liabilities, and income.

[1097] Jerry Choong, "Transparency International Malaysia Calls for Legislation Mandating Asset Declaration by Politicians," *The Malay Mail*, 2021, https://www.malaymail.com/news/malaysia/2021/07/19/transparency-international-malaysia-calls-for-legislation-mandating-asset-d/1991079.

Such legislation must be introduced to make both politicians and those holding positions of power (high-ranking government officials) declare and update their wealth on a regular basis. Those whose wealth has grown significantly within a short period must be compelled to provide an explanation with the necessary supporting information. It is equally important to include information about the beneficial ownership of assets in these declarations to prevent the practice of colluding with a friendly party to avoid detection.[1098] The beneficial ownership issue is further discussed under recommendation 6.1.6.

The prime minister is responsible for pushing for this asset declaration law as part of the reform agenda to ensure his administration practices good governance and eradicates any form of corruption among elected representatives and senators.[1099] The best legal solution for public officers' declarations for the country should take into account their national context, including their legal framework and political and economic stability.

Having an AD law is a good move by the Malaysian government and important to developing public awareness on corruption and IE. A well-designed and structured asset declaration system can serve as an effective tool for efficiently preventing and detecting corruption, ultimately resulting in successful convictions for corruption-

[1098] Fuad Nizam, "Wealth of Those in Power Should be Made Transparent with Asset Declaration Act," *The New Straits Times,* 2023, https://www.nst.com.my/news/nation/2023/04/900822/wealth-those-power-should-be-made-transparent-asset-declaration-act.
[1099] Ibid.

related crimes.

It is better to have an asset declaration and a specific law to govern asset declaration in Malaysia,[1100] especially for the public sector, considering that they are vulnerable to this kind of corruption act and have a higher duty towards the public.[1101] Furthermore, a specific AD law should include Ministers and Members of Parliament declaring their assets and wealth before holding the post and after their exit.[1102]

This study was conducted with the aim of analysing and evaluating the asset declaration system in Malaysia and proposing enhancements for its improvement. The purpose of this study is to examine the effectiveness of the current asset declaration system in Malaysia by conducting a thorough analysis of the problems and challenges encountered within the current system. Additionally, it aims to propose a redesign of the asset declaration system in Malaysia in order to combat corruption more effectively.

6.3.2.2 The new asset declaration law should include the new Asset Profiling System.

The asset declaration law should introduce a new system, known as the asset profiling system, to determine the expected assets of personnel based on their

[1100] Interview with Respondent 7, Legal Officer, Revision Unit, State Legal Advisor Offices, Penang, February 26, 2020. & Interview with Respondent 2, State Director of MACC, Malaysian Anti-Corruption Commission, Perlis, December 16, 2019.
[1101] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.
[1102] Interview with Respondent 9, Civil & Criminal Lawyer, Kedah, November 26, 2020.

positions, years of service, current and past emoluments. Asset profiling should also include those of their spouses, dependents, and immediate family members, along with any business interests or institutions they may be part of. As such, it becomes necessary for public officers and politicians to act honestly and with integrity. Regardless of their political affiliation, they must be a good role model and make every effort to fight corruption in both words and deeds.

Asset profiling should be included in the HRMIS system, and it should be improved to make it a proper system and law. For example, the period of declaration should be either once a year or once every two years, instead of the current practice of once every five years. Previously, it was done manually, but it has been improved through an online system. This method of declaring assets should be improved to facilitate the implementation of Section 36. The system should be more systematic, for example, every time a public officer buys new property or assets, it will be automatically entered in the system and accessible to their head of department to check.

Furthermore, this asset profiling system can also help to solve the country's specific issues because it may increase transparency and the trust of citizens in public administration by disclosing information about the assets of public officers and politicians and shows they have nothing to hide. Moreover, it can assist heads of public institutions in preventing conflicts of interest among their employees and

Universiti Utara Malaysia

resolving such situations when they arise, thereby promoting integrity within their institutions. Additionally, it can track the wealth variations of specific public officers to deter wrongdoing, protect them from false allegations, and provide additional evidence to clarify the extent of illicit enrichment or other criminal activity.

6.3.2.3 Verification mechanism for asset declarations, including sanctions for non-compliance.

After the implementation of an asset declaration law, the process of verifying the accuracy and completeness of asset declarations is important. Simultaneously, one of the most challenging limitations to enforce is the need for more effective monitoring and verification of the declaration, which can render the system insignificant. As previously suggested, it is recommended that the Malaysian Anti-Corruption Commission thoroughly examine the financial records of members of parliament and the State Assembly. Additionally, they should be granted authority to commence proceedings against public officers who appear to be living beyond means.

Meanwhile, for public officers, the verification mechanism for asset declarations must be made by the head of department. The head of department must play an important role in making sure the staff follows the law and declares assets. Experts suggest the head of department or authority can examine the previous asset

Universiti Utara Malaysia

declarations of public officers and compare them with the lifestyle of the same officer.

It is critical to impose an obligation on the superior to monitor their staff or workers; the responsibility lies with the head of department. The head department is accountable to the staff members who failed or refused to declare their assets. The head of department should have done something about it. It is more about the monitoring system. Because IE is a governance issue, it all comes from a good governance law. The head of department plays an important role in ensuring their staff and workers declares their assets.

6.3.2.4 Address the issue of beneficial ownership and the misuse of proxies by incorporating relevant provisions into the MACC Act.

As discussed under data analysis 4.1.13 on the issue of beneficial ownership or proxy, public officers often hide their assets under the names of their relatives, their spouses, and other individuals. As a result, it ought to be possible to monitor the wealth not only of a public officer but also that of their close friends and family. However, the monitoring of wealth can be done through the tax system, the public officers' declaration system, or law enforcement authorities.

Besides, another recommendation for this "hidden asset problem" by beneficial ownership and proxy is to incorporate boxes into the asset disclosure forms. These boxes should require the public officer to disclose any property they enjoy or benefit

from, even if it is not registered in their name. Examples of such property include donations, rentals, borrowed property, and gifts given to individuals other than their spouse or minor children. The forms should include other people's property that is enjoyed by the public officer.

Other than criminalising the law of IE and asset declaration, another recommendation for the issue of a proxy is the signing of the Corruption Integrity Pledge (CIP) by the public officer. As discussed under Chapter 2, in 2.7.2.1, MACC uses the CIP as an initiative against those who have signed and acknowledged it but are involved in corrupt activities. So, it is important for individual public officers to sign CIP because CIP can prevent issues relating to proxy or beneficial ownership by making sure public officers who have signed CIP have full knowledge and give full commitments over all the content of the CIP. In fact, there should be an additional clause in the code of ethics, or CIP, saying that the person who signed this CIP knows what corruption is and has no proxy or other beneficial ownership relating to his assets or property. It is important to make sure there is an acknowledgement from him about this issue. In order to prevent public officers from manipulating the issue of proxy and beneficial ownership, it is crucial to ensure that he has a clear understanding of the matter, as evidenced by his signature on the CIP. Therefore, if a public officer is accused of living beyond his means or having proxies in relation to his assets and property, it is his responsibility to prove his innocence. He cannot deny or defend his actions, as he is aware that bribery is wrong. We must examine and comprehend the concept of beneficial ownership, which requires individuals to

declare their wealth with complete sincerity and honesty,[1103] and the burden of proof is swiftly passed to him to prove the sources of his excessive wealth. The criminalisation of IE and asset declaration law can be a good medium to overcome the issue of beneficial ownership and proxy and be a solution to the issue. The newly recommended IE and asset declaration laws will address all of Section 36's weaknesses.

As discussed in the significance of the study under Chapter 1, this study will significantly contribute towards strengthening the existing law on the prevention of corruption in Malaysia, thereby helping to reduce the corruption rate, especially those involved in illicit enrichment crimes.

Therefore, the proposed amendment involves only the amendment of Section 36 and the asset declaration law, and it is viable to be implemented. Basically, in Malaysia, a bill may be enacted by a law-making procedure. In the majority of cases involving the legislative process, a government minister or ministry prepares a first draft (Bill) with the assistance of the Attorney-General's Chambers. The bill is first presented to the House of Representatives (Dewan Rakyat) and then the Senate (Dewan Negara) for the first, second, and third readings, respectively. Duties in legislation, which is located in the legislature, include the duty to amend the constitution, approve the new law, repeal the old law and new laws, and verify their progress.

[1103] Interview with Respondent 6, Director of Financial Analysis, Financial Analysis Division, Malaysian Anti-Corruption Commission, Putrajaya, February 21, 2020.

After being debated and passed, the bill is submitted to the King (Yang di-Pertuan Agong) for royal assent and is gazetted.[1104] As a general rule, the Parliament has the power to make laws for the entire Federation, or any part of it. As a result, there is no issue with the non-viability of the proposed section because it only involves amendments, which must go through the parliamentary legislative process. The only issue here is whether Malaysian politicians and parliamentarians will agree to amend Section 36, table this bill, and get it approved as law. The approval of the amendment to Section 36 and the new asset declaration law will shed new light on the issue of corruption in Malaysia, and it is one step forward to a corrupt-free nation and will place Malaysia on par with first-world nations, where such laws have been in place for years and are enshrined in their laws and policies. It is hoped that the new proposed section is capable of functioning adequately in fighting IE.

Universiti Utara Malaysia

## 6.4 Conclusion

After a thorough and detailed analysis of findings and recommendations has been discussed, IE law is very important to be criminalised in Malaysia. When considering whether Malaysia “needs” to legalise a criminal offence for illicit enrichment, the researcher has strong reasons for supporting the passing of such an offence in the current institutional context. As discussed above, the newly proposed Section 36A is viable for implementation, and the proposed law is specifically limited to Section 36

[1104] CLJ Malaysia, "Legislation: An Overview," https://www.cljlaw.com/index.html.

and IE-related cases only, and the scope is confined to addressing issues within these two areas. It does not extend to other areas of law or corruption-related offences, focusing solely on the provisions outlined in Section 36, which deals with the unexplained accumulation of wealth, and other cases where illicit enrichment is suspected. Currently, the primary challenge to Malaysia's legal system in controlling corruption is the inadequacy of a specific offence for illicit enrichment, which is Section 36 of the MACCA. Furthermore, there is no legislation requiring or making it mandatory for public officers to declare their assets. The lacunas in these two issues have led to an increase in the issue of living beyond means among public officers, as reported in a newspaper article and discussed in the literature review. The lacuna in Section 36 of the MACCA has resulted in weak and ineffective procedures and processes for detecting illicit enrichment. Furthermore, there is the issue of government servants not complying with the AD requirement, and limited cases of AD due to the law's insufficiency and lack of severe penalties. This is why having an Asset Declaration (AD) law is crucial as a tool to detect illicit enrichment within the public sector. It also places responsibility on the heads of departments to combat corruption. The newly proposed provision aims to strengthen the existing law. While it may not address or resolve all issues related to illicit enrichment, it is hoped that it will help reduce the number of IE-related cases.

The crime of corruption is so hard to prove, and so is IE. Therefore, criminalising IE offers numerous advantages, and the introduction of the illicit enrichment offence

Universiti Utara Malaysia

simplifies the work of anti-corruption investigators and prosecutors. This is particularly beneficial, as corruption is a difficult crime to detect and prove due to its hidden nature. Besides, corrupt conduct is perceived as a light crime by society because it frequently results in satisfaction for both parties (giver and receiver). As a result, corruption is not considered a serious crime.

It is hoped that the newly proposed Section 36A is effective and can be a good mechanism to deter corruption, and all members of the public should be aware that it is an offence. It is something that works towards the purpose of criminal justice, which is to deter rather than punish. A person who receives a notice to provide information about their property is required to take an oath pursuant to Section 36, and the person is aware that he is being observed for crime,[1105] because the implementation of the law of IE in Malaysia will be considered a prevention and deterrent against future crimes. However, no further study can prove that the provision under Section 36 of the MACCA is the best or most effective crime prevention measure.

So long as the law is not implemented, criminalised, and put into practice, we will not see the loopholes in it. Nothing can be done to prevent IE if it is not criminalised and made into a specific provision. How do we want to identify the weakness of a law if it does not exist, is not criminalised, and is not made into a provision? So, in

[1105] Interview with Respondent 3, Law Scholar, University Utara Malaysia, Sintok, January 9, 2020.

light of the underdeveloped nature of illicit enrichment legislation, this research fully supports illicit enrichment legislation as a comprehensive approach or as a silver bullet solution for combating corruption and other crimes. Despite the need to thoroughly examine many aspects of the concept in court, it is crucial to approach the field of illicit enrichment legislation with caution. Nonetheless, illicit enrichment laws undeniably have significant potential for asset recovery.

Since the recommendation to implement the IE provision in Malaysia aligns with the rights to property, presumption of innocence, and burden of proof discussed in Chapter 4 of this thesis' analysis, there are no legal restrictions in the Malaysian legal system that would prevent the Parliament from enacting a law against illicit enrichment.

Universiti Utara Malaysia

Enforcement agencies, including the MACC, must consistently combat corruption and illicit enrichment, and the laws addressing corruption and illicit enrichment must align with current issues and technological development.

Besides, the criminalisation of illicit enrichment will make it clear to public officers that if they get involved in corrupt conduct, they will lose their office, forfeit their illegally acquired assets, and may face severe penalties and imprisonment. The effect and main principle of the punishment and penalty of the law are one way of rehabilitation for the prisoners so that they can return to society and become

individuals who can serve their family, community, and country after completing their serving sentence.

Corruption and illicit enrichment are indeed global problems. Efforts to criminalise IE and deal with it through the adoption of best practices from international law have raised various questions from legislators. Even though further discussion and debate on the criminalisation of illicit enrichment are still needed, this effort cannot stop here, and all countries need to introduce illicit enrichment as a criminal offence in their laws to fight corruption. Malaysia should criminalise illicit enrichment explicitly in the fight against corruption by revising the current anti-corruption law and other relevant laws.

It is hoped that these recommendations will be useful for the Malaysian government in developing, reforming, and evaluating illicit enrichment laws and asset declaration systems at the national level. The recommendation for the law of IE comes with the hope that there will be no discrimination against it. Previously, the issues of IE and living beyond means were well known, but the laws were not equally applied to all ranks in the public sector, nor were they applied inconsistently based on a person's position in society. Everybody should be equal under the law, and there should not be discrimination in the application of the law to all sectors of society. Specific laws are required, but they must be strictly applied and enforced for all members of society. This will enhance the transparency of the law. This study paves the way for future research aimed at further enhancing Malaysia's

Universiti Utara Malaysia

overall anti-corruption framework.

Lastly, the fight against corruption should not have ended, particularly among Muslims. As Muslims, we have to follow Islamic teachings and understand how Islam really prohibits the act of bribery. Bribery is a big sin in Islam. Muslims should not accept or pay a bribe in any form or under any circumstances. The most likely reason for widespread corruption in most Muslim nations is that some individuals are not sufficiently committed and devoted to the teachings of Islam. In this sense, internal constraints such as *Aqidah* (faith and belief) should support external constraints such as Islamic education, law, and institutional infrastructure in combating corruption. Corruption is a disease; integrity is the cure. Some may escape the country's legal system, but they cannot escape Allah on the Day of Judgment. True success in this world and hereafter is when we avoid this shameful act and become true Muslims.

Universiti Utara Malaysia

# REFERENCES

## Books


"*Handbook for Curbing Corruption in Public Procurement*." Transparency International. Last modified 2006. https://www.transparency.org/en/publications/handbook-for-curbing-corruption-in-public-procurement

Adams, William C. *Conducting Semi-Structured Interviews*. In Handbook of Practical Program Evaluation, 492–505. 4th ed. 2015.

Alatas, Syed Hussein. *The Sociology of Corruption: The Nature, Function, Causes and Prevention of Corruption*. Times Books International, 1968.

Amnesty International. *Amnesty International: Fair Trial Manual*. 2nd ed. London, United Kingdom: Amnesty International Publications, 2014.

Campos, J. Edgardo, and Sanjay Pradhan. *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*. Washington, D.C.: The International Bank for Reconstruction and Development / The World Bank, 2007.

Chynoweth, Paul. *Advanced Research Methods in the Built Environment: Chapter Three Legal Research*. Blackwell Publishing Ltd, 2008.

Creswell, John W. *30 Essential Skills for the Qualitative Researcher*. 2nd ed. (SAGE Publications, 2016).

Creswell, John W. *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches.* 4th ed. London, England: SAGE Publications, 2013.

Creswell, John W., and Dana L. Miller. *Determining Validity in Qualitative Inquiry*. Oxford Research Encyclopedia of Psychology 39, no. 3 (2010): 124–130.

Fisman, Ray, and Miriam A. Golden. *Corruption: What Everyone Needs to Know*. Oxford University Press, 2017.

G. Zikmund, William. *Business Research Methods*. 6th ed. Ohio, Southwestern, 2000.

Habershon, Alexandra, and Tammar Berger. 'Chapter 1: Argentina.' In *Income and Asset Disclosure : Case Study Illustrations*. The World Bank, 2013.


Universiti Utara Malaysia

Hasan Al-Sayed, Nabil Mahmoud. *The Crime of Illicit Enrichment*. 1st ed. Cairo-Egypt: Etrac for publishing, 2005.

Manion, Melanie. *Corruption by Design: Building Clean Government in China and Hong Kong*. Harvard University Press, 2004.

Morse, Janice M., and Lyn Richards. *Readme First for A User's Guide to Qualitative Methods*. 3rd ed. SAGE Publications, Incorporated, 2002.

Muthiah, Puvenesvary. "Interviews." In *Qualitative Research: Data Collection and Data Analysis Techniques*, 19–43. 2nd ed. Sintok, Kedah: UUM Press, 2011.

Naidu, R. Sivabala. "Content Analysis." In *Qualitative Research: Data Collection and Data Analysis Techniques*, 101–111. Sintok, Kedah: UUM Press, 2011.

OECD. *Asset Declarations for Public Officials: A Tool to Prevent Corruption in Eastern Europe and Central Asia*. OECD Publishing. 2011. *http://dx.doi.org/10.1787/9789264095281-en*

Puvenesvary, M., Radziah Abdul Rahim, R. Sivabala Naidu, Mastura Badzis, Noor Fadhilah Mat Nayan, and Noor Hashima Abd Aziz. *Qualitative Research: Data Collection and Data Analysis Techniques*. 2nd ed. Sintok, Kedah: UUM Press, 2011.

Quah, Jon S.T. *Curbing Corruption and Enhancing Trust in Government: Some Lessons from Singapore and Hong Kong*. In Handbook of Asian Criminology, 25–47. New York: Springer Science+Business Media, 2013.

Quah, Jon S.T. *Curbing Corruption in Asian Countries: An Impossible Dream?* Emerald Group Publishing Limited, 2011.

Quah, Jon S.T. *Different Paths to Curbing Corruption: A Comparative Analysis*. Emerald Group Publishing Limited (2015): 219–255.

Satar, Akhbar. *Corruption And Crime in Malaysia: Perception or Reality?* 1st ed. Kuala Lumpur: Akhbar & Associates, 2018.

Sherman, Lawrence W. *Scandal and Reform: Controlling Police Corruption.* University of California Press, 1978.

Singh, Rattan. *Legal Research Methodology*. 1st ed. Lexis Nexis, 2013.

Volosin, Natalia A. "Argentina's Corruption Machine: Toward an Institutional Approach." In *Corruption in Latin America: How Politicians and Corporations Steal from Citizens*, 2018.

Yaqin, Anwarul. *Legal Research and Writing*. Kelana Jaya: Malayan Law Journal Sdn Bhd, 2007.

**Conference Papers and Proceedings**

ADB-OECD Anti-Corruption Initiative for Asia-Pacific Combating Corruption in the New Millennium. "Effective Prosecution of Corruption." 1–76, 2003. https://read.oecd-ilibrary.org/governance/effective-prosecution-of-corruption_9789264041394-en#page1.

ADB-OECD Anti-Corruption Initiative for Asia-Pacific. "Anti-Corruption Policies in Asia and the Pacific: The Legal and Institutional Frameworks for Fighting Corruption in Twenty-One Asian and Pacific Countries," 2004.

Asia Regional Integration Center. "ADB-OECD Anti-Corruption Initiative for Asia and the Pacific." In *Asian Development Bank*, 2015. https://aric.adb.org/initiative/adb-oecd-anti-corruption-initiative-for-asia-and-the-pacific.

Balboa, Jenny, and Erlinda M. Medalla. "Anti-Corruption and Governance: The Philippine Experience." In *APEC Study Centre Consortium Conference*, 2006.

Bhargava, Vinay. "Curing the Cancer of Corruption." *World Bank Global Issues Seminar Series,* 2006. http://siteresources.worldbank.org/EXTABOUTUS/Resources/Ch18.pdf

Bhargava, Vinay. "In the Cancer of Corruption." *World Bank Global Issues Seminar Series,* 2005. http://siteresources.worldbank.org/EXTABOUTUS/Resources/Corruption.pdf

Hechler, Hannes. 2017. "UNCAC in a nutshell." *U4 Anti-Corruption Resource Centre*. https://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf

Low, Lucinda A. "The United Nations Conventions Against Corruption: The Globalization of Anticorruption Standards." In *Conference of the International Bar Association International Chamber of Commerce Organization for Economic Cooperation and Development*, 2:1–21. London, England, 2006. https://www.steptoe.com/images/content/1/6/v1/1600/2599.pdf

Universiti Utara Malaysia

Mohamed, Abu Kassim. “Transforming Anti-Corruption Agency Towards Battling against Corruption.” In *International Anti-Corruption Conference: Malaysian Anti-Corruption Commission*, 2015.

United Nations. “Review of Implementation of the United Nations Convention against Corruption.” In *Conference of the States Parties to the United Nations Convention against Corruption,* 2013.

United Nations. “Review of Implementation of the United Nations Convention against Corruption.” In *Conference of the States Parties to the United Nations Convention against Corruption*, 1–13. St. Petersburg, Russia, 2015.

United Nations. “Review of Implementation of the United Nations Convention against Corruption." In *Conference of the States Parties to the United Nations Convention against Corruption,* 2017.

United Nations. *United Nations Convention Against Corruption*. *United Nations Office on Drugs and Crime*. Vienna, 2004.

**Government Documents**

Malaysian Anti-Corruption Commission. “*On the Road to A Corruption-Free Nation: Anti-Corruption Initiatives in Malaysia*.”

Mohd Jamil, Shamshun Baharin. *Asset Declaration in Malaysia*, 2018.

Natural Resource Governance Institute. “*Egypt Law No.62, 1975 on Illegal Gains*.” Accessed October 10, 2023. https://www.resourcedata.org/dataset/rgi-law-62-1975-illegal-gains.

Sulaiman, Fauziah. *Anti-Bribery Management System (ABMS): An Initiative to Strengthen the Corporate Integrity*. SIRIM QAS International Sdn. Bhd. and The Malaysian Institute of Integrity. Kuala Lumpur, Malaysia, 2019.

**Journal Articles**

Abdul Aziz, Tunku. “International Case Study: Stamping Out Corruption in Malaysia.” *113th International Training Course Visiting Experts’ Papers* (2002): 393–399.

Abdul Rahman, Rohana, Asmah Laili Yeon, Zainal Amin Ayub, and Madya Nurretina Ahmad Shariff. “The Law on Presumption in Corruption Cases in Malaysia.” *International Journal on Graft and Corruption Research* 2 (2014): 1–10.

Abu-Morad, Mohannad Ahmad, Dr Fauziah Mohd Noor, and Dr Zainal Amin Ayub. 'The Shortcomings of the Income and Asset Declaration System in Jordan Illicit Enrichment Law'. *Journal of Global Business and Social Entrepreneurship (GBSE)* 2, no. 1 (2016): 98–110.

Abu-Morad, Mohannad Ahmad, Zainal Amin Ayub, and Fauziah Mohammad Noor. "The Law on the Illicit Enrichment Crime and Financial Disclosure in Jordan: Issue of Effectiveness and Enforceability." *The Journal of Social Sciences Research* 2, no. 5 (2016): 100–105.

Abu-Morad, Mohannad Ahmad, Zainal Amin Ayub, and Fauziah Mohammad Noor. "Burden of Proof and Presumption of Innocence in the Prosecution of Illicit Enrichment with Reference to the Jordanian Legislation." *Journal of Law, Policy and Globalization* 49 (2016): 25–29.

Al Agha, Samah. "Illicit Enrichment: Is Reconciliation a Prevention of or an Invitation to Corruption? (The Egyptian Example)." *Journal of Financial Crime* 28, no. 4 (2021): 1022–1031. https://www.emerald.com/insight/1359-0790.htm%0AJFC.

Andrade, Felipe Garcia. "Singapore and Finland: Why So Clean?" *Graphite Publications* (2012): 1–22.

Banks, Macayla. 'Analysis of a Neighborhood-Based Criminological Theory: Broken Windows Theory.' *ASU Criminal Justice Journal* 3 (2022): 10–16.

Bello, Akeem Olajide. "United Nations and African Union Conventions on Corruption and Anti-Corruption Legislations in Nigeria: A Comparative Analysis." *African Journal of International and Comparative Law* 22, no. 2 (2014): 308–333.

Bengtsson, Mariette. 2016. "How to Plan and Perform a Qualitative Study Using Content Analysis." *NursingPlus Open* 2: 8–14. https://doi.org/10.1016/j.npls.2016.01.001.

Birney, Mayling. "Decentralization and Veiled Corruption Under China's Rule of Mandates." *The London School of Economics and Political Science.* 53 (2014): 55–67.

Boles, Jeffrey R. "Criminalizing the Problem of Unexplained Wealth: Illicit Enrichment Offenses and Human Rights Violations." *Legislation and Public Policy* 17, no. 835 (2014): 835–880.

Universiti Utara Malaysia

Braun, Virginia, and Victoria Clarke. “Using Thematic Analysis in Psychology.” *Qualitative Research in Psychology* (2006).

Cai, Hongbin, Hanming Fang, and Lixin Colin Xu. “Eat, Drink, Firms, Government: An Investigation of Corruption from the Entertainment and Travel Costs of Chinese Firms.” *The Journal of Law and Economics* 54, no. 1 (2011): 55–78.

Catanzaro, Marci, and Nancy Fugate Woods. “Using Qualitative Analytical Techniques.” In *Nursing Research: Theory and Practice*. The CV Mosby Company, 1988. & Burnard, Philip. “A Method of Analysing Interview Transcripts in Qualitative Research.” *Nurse Education Today* 11, no. 6 (1991): 461–466.

CLJ Malaysia. “Legislation: An Overview.” Accessed August 20, 2023. https://www.cljlaw.com/index.html.

de Michele, Roberto. “The Role of the Anti-Corruption Office in Argentina: Lessons on Corruption and Anti-Corruption: Policies and Results.” *The Journal of Public Inquiry* (2001): 17–20.

Diop, Mouhamed Bachir. “National Mechanisms against Illicit Enrichment Case Study: Senegal.” *Journal of Justice* 1, no. 1 (2017): 1–12.

Dreher, Axel, and Thomas Herzfeld. “The Economic Costs of Corruption: A Survey and New Evidence.” June (2005): 1–33.

Essien, Ettah B. “Corruption and Economic Development in Nigeria: A Materialistic Observation.” *Journal of Economics and Sustainable Development* 3, no. 14 (2012): 34–48.

Farooq, Muhammad Bilal, and Charl De Villiers. “Telephonic Qualitative Research Interviews: When to Consider Them and How to Do Them.” *Meditari Accountancy Research* 25, no. 2 (2017): 291–316.

Francis, Daniel. “Taking Back Missed Opportunities Fairly: The Impact of Organizational Corruption Towards Businesses in Malaysia.” *International Journal of Commerce, Business and Management (IJCBM)* 2, no. 2 (2013): 78–84.

Gawas, Vijay M. “Doctrinal Legal Research Method: A Guiding Principle in Reforming the Law and Legal System towards The Research Development.” *International Journal of Law* 3, no. 5 (2017): 128–130.

Universiti Utara Malaysia

Hatchard, John. "Recent Developments in the Laws on Corruption and the Regulation of Conduct in Public Life: Implications for Law Teachers and Legal Research in the Commonwealth." *Journal of Commonwealth Law and Legal Education* 4, no. 2 (2006): 137–155.

Jayawickrama, Nihal. "A Holistic Approach to Combating Corruption." *Commonwealth Law Bulletin* 25, no. 2 (1999): 658–679.

Jorge, Guillermo. *The Romanian Legal Framework on Illicit Enrichment*. Washington, DC., 2007.

Kapeli, Nur Shafiqa, and Nafsiah Mohamed. "Insight of Anti-Corruption Initiatives in Malaysia." *Procedia Economics and Finance* 31 (2015): 525–534.

Kar, Dev, and Joseph Spanjers. *Illicit Financial Flows from Developing Countries: 2004-2013*, 2014.

Khalaf S., Alharbi Ali. "An Overview of the Saudi Arabian Criminal Justice Procedures against Corruption in the Public Sector." *138th International Senior Seminar Participants' Papers*. Resource Material Series No. 77 (n.d.): 123–130.

Kwok-Chung, Jeremy Lo. "Combating Corruption in Hong Kong." *138th International Senior Seminar Visiting Experts' Papers* (n.d.): 3–10.

M. Nichols, Philip. "The Psychic Costs of Violating Corruption Laws." *Vanderbilt Journal of Transnational Law 45* (2012): 145–210.

Macmillan, Joanna. "Reformasi and Public Corruption: Why Indonesia's Anti-Corruption Agency Strategy Should be Reformed to Effectively Combat Public Corruption." *Emory International Law Review* 25, no. 1 (2011): 587–630. https://scholarlycommons.law.emory.edu/eilr/vol25/iss1/13.

Maguire, Moira, and Brid Delahunt. "Doing A Thematic Analysis: A Practical, Step-By-Step Guide for Learning and Teaching Scholars." *All Ireland Journal of Teaching and Learning in Higher Education*, no. 3 (2017): 3351–3354.

Man-wai, Tony Kwok. "Effective Measures to Combat Corruption in Hong Kong." *19th UNAFEI UNCAC Training Programme Visiting Experts' Papers Resource Material Series No.101* (2017): 188–193. https://unafei.or.jp/publications/pdf/RS_No101/No101_23_VE_Kwok_1.pdf

Mao, Yina, Chi Sum Wong, and Kelly Z. Peng. “Breaking Institutionalized Corruption: Is the Experience of the Hong Kong Independent Commission against Corruption Generalizable?” *Asia Pacific Journal of Management* 30, no. 4 (2013): 1115–1124.

Messick, Richard. ‘The United Nation Convention Against Corruption and Income and Asset Declaration’. *NACC Journal* (2010): 101–112.

Mohamed, Ahmad Martadha. “Personal Integrity as a Guiding Principle for Fighting Corruption.” *Journal of New Government Paradigm* 1, no. 17 (2014): 14–27.

Morse, Janice M. "Determining Sample Size." *Qualitative Health Research* 10, no. 1 (2000): 3-5.

Morse, Janice M. “The Significance of Saturation.” *Qualitative Health Research* 5, no. 2 (1995): 147–149.

Muzila, Lindy, Eric and Yang, and Urbanavicius Saulius. “Investigation and Prosecution of Corruption: Bribery, Illicit Enrichment and Liability of Legal Persons.” In *OECD Anti-Corruption Network for Eastern Europe and Central Asia*, 1–109. Georgia, 2013.

Muzila, Lindy, Michelle Morales, Marianne Mathias, and Tammar Berger. *On the Take: Criminalizing Illicit Enrichment to Fight Corruption*. The World Bank & UNODC, 2012.

Nagle, L.E. “The Challenges of Fighting Global Organized Crime in Latin America.” *Fordham International Law Journal* 26, no. 6 (2002): 1649–1715.

Nasruddin, Amir. “Best Practices in Anti-Corruption: A Decade of Institutional and Practical Development in Southeast Asia” (n.d.): 131–137.

Othman, Zaleha, Rohami Shafie, and Fathilatul Zakimi Abdul Hamid. “Corruption – Why Do They Do It?” *Procedia - Social and Behavioral Sciences* 164, (2014): 248–257. http://dx.doi.org/10.1016/j.sbspro.2014.11.074.

Paino, Halil, Khairul Anuar Abdul Hadi, and Nafsiah Mohamed. “Corruption: A Comparison between Singapore and Malaysian Legal Regime.” *Malaysian Accounting Review* 15, no. 1 (2016): 275–285.

Parameswaran, Giri. ‘An Economic Analysis of Criminal Intent and Wilful Blindness’ (2021).

Universiti Utara Malaysia

Pathirane, Leila, and Derek W.Blades. “Defining and Measuring the Public Sector: Some International Comparisons.” *Review of Income and Wealth* 28, no. 3 (1982): 261–289.

Quah, Jon S.T. “Combating Corruption in Singapore: What Can Be Learned?” *Journal of Contingencies and Crisis Management* 9, no. 1 (2001): 29–35.

Quinn Patton, M., and M. Cochran. “A Guide to Using Qualitative Research Methodology.” (2007).

Schrotch, Peter W., and Ana Daniela Bostan. “International Constitutional Law and Anti-Corruption Measures in the European Union’s Accession Negotiations: Romania in Comparative Perspective.” *The American Journal of Comparative Law* 52, no. 3 (2004): 625–654.

Schroth, Peter W. “The African Union Convention on Preventing and Combating Corruption.” *Journal of African Law* 49, no. 1 (2005): 24–38.

Shehu, Abdullahi Y. “Key Legal Issues and Challenges in the Recovery of the Proceeds of Crime: Lessons from Nigeria.” *International Law Research* 3, no. 1 (2014): 186–201.

Suleh-yusuf, Mohammed. ‘Corporate Criminal Liability: Reviewing the Adequacy of Wilful Blindness as Mens Rea.’ *International Journal of Law* 3, no. 2 (2017): 24–32. www.lawjournals.org.

Van Kaenel, Frans. ‘Wilful Blindness: A Permissible Substitute for Actual Knowledge Under the Money Laundering Control Act?’ *Washington University Law Review* 71, no. 4 (1993).

Walton, Douglas N. “Burden of Proof, Argumentation.” 2 (1988): 233–254. & Saadna, A. “Burden of Proof in the Algerian Law.” University of Biskra Repository. 2014. 197-198.

Wilson, James Q., and George L. Kelling. “Broken Windows: The Police and Neighborhood Safety.” *The Atlantic Monthly* 249, no. 3 (1982): 29–38.

Wodage, Worku Yaze. “Burdens and Standards of Proof in Possession of Unexplained Property Prosecutions.” *Mizan Law Review* 8, no. 1 (2014): 1–44.

Zadoyan, Karen, Carl Ulbricht, Marat Atovmyan, and Syuzanna Soghomonyan. *International Experience of the Criminalisation of Illicit Enrichment, and the Possibilities of Criminalising Illicit Enrichment in Armenia*, 2014.

Universiti Utara Malaysia

**Newspaper Articles**

"Asset Declaration Law Needed for Greater Transparency." *Free Malaysia Today,* 2021.https://www.freemalaysiatoday.com/category/nation/2021/07/19/asset-declaration-law-needed-for-greater-transparency-says-ti-m/.

"Bekas Pegawai Kanan KBS Gagal Ketepi Hakim Dengar Kesnya." *Sinar Harian,* April 2019. https://www.sinarharian.com.my/article/21952/berita/mahkamah/bekas-pegawai-kanan-kbs-gagal-ketepi-hakim-dengar-kesnya

"C4: Amend MACC Act to Probe 'Unusual' Wealth." *FMT Reporters*, Accessed December 12, 2017. https://www.freemalaysiatoday.com/category/nation/2017/04/19/c4-amend-macc-act-to-probe-unusual-wealth/.

"Corruption in Malaysia: Perception vs Reality." *Malaysian Digest,* 2014. http://malaysiandigest.com/.../282.../534261-corruption-in-malaysia-perception-vs-reality.html.

"Corruption Perceptions Index: Malaysia Drops Five Spots." *The Sun Daily*, 2022. Accessed June 6, 2022. https://thesun.my/local/corruption-perception-index-m-sia-drops-five-spots-FH8797421

"Corruption Trial." *BBC News,* 2020. https://www.bbc.com/news/world-asia 53563065.

"Court of Appeal Affirms Ku Chin Wah's Acquittal." *The Sun Daily*, September 2018. https://www.thesundaily.my/archive/court-appeal-affirms-ku-chin-wahs-acquittal-KUARCH581036

"CPI Ranking Sign of Corruption Getting Worse in Malaysia." *Borneo Post Online*, Accessed June 17, 2018. http://www.theborneopost.com/2018/02/24/cpi-ranking-sign-of-corruption-getting-worse-in-malaysia-rep/.

"Ex-Immigration Director gets New Defence Team." *The Star*, March 2012. https://www.thestar.com.my/news/nation/2012/03/20/eximmigration-director-gets-new-defence-team

"Former Director in PM's Dept in Penang Gets Reduced Jail Term." *The Star*, April 2022. https://www.thestar.com.my/news/nation/2022/04/06/former-director-in-pm039s-dept-in-penang-gets-reduced-jail-term

Universiti Utara Malaysia

"Former Penang Immigration Director Ordered to Enter Defence." *Borneo Post Online,* February 2012. https://www.theborneopost.com/2012/02/09/former-penang-immigration-director-ordered-to-enter-defence/

"Ku Chin Wah Acquitted of Graft Charge." *The Sun Daily,* May 2017. https://www.thesundaily.my/archive/ku-chin-wah-acquitted-graft-charge-ETARCH448318

"LHDN Special Unit to Check on Show of 'Extraordinary Wealth' on Social Media." *Borneo Post Online*, Accessed December 12, 2018. http://www.theborneopost.com/2018/11/12/lhdn-special-unit-to-check-on-show-of-extraordinary-wealth-on-social-media/.

"MACC Finalising Ips on Three Senior Govt Officers." *New Straits Times,* Accessed June 15, 2016. https://www.nst.com.my/news/2016/08/169170/macc-finalising-ips-three-senior-govt-officers.

"MACC Recommends Act for Mandatory Asset Declaration." *Malaysia Kini,* 2021. https://www.malaysiakini.com/news/582969?login_method=google.

"MACC: Report Civil Servants Living Beyond Their Means." *The Star*, August 2017. https://www.thestar.com.my/news/nation/2017/08/09/report-civil-servants-living-beyond-their-means-says-macc-deputy-chief/

"Najib gets concurrent 12-year jail sentence, RM210 mil fine." *The Star,* 2020. https://www.thestar.com.my/news/nation/2020/07/28/najibs-src-trial-live-updates.

"Perbicaraan Kes Bekas Pengarah Imigresen Ditetapkan 30 April." *M Star*, March 2012. https://www.mstar.com.my/lokal/semasa/2012/03/19/perbicaraan-kes-bekas-pengarah-imigresen-ditetapkan-30-april

"Recent Murders of Government Officials." *The Star,* September 2015. https://www.thestar.com.my/news/nation/2015/09/18/recent-murders-of-govt-officials/?style=biz,

"RM100m Pocketed in Small Amounts. Reveals 'Nothing to Hide' Minister." *Malaysia Kini,* March 2016. https://www.malaysiakini.com/news/334662

"Wealth' on Social Media." *Borneo Post Online*, Accessed December 12, 2018. http://www.theborneopost.com/2018/11/12/lhdn-special-unit-to-check-on-show-of-extraordinary-wealth-on-social-media/.

"Youth and Sports Official Charged by MACC for Misappropriating Govt Funds." *Astro Awani*, March 2016. https://www.astroawani.com/berita-malaysia/youth-and-sports-official-charged-macc-misappropriating-govt-funds-100612

Abas, Azura. "Liew: Mps Who Fail to Declare Assets after Dec 5 Deadline can be Suspended." *The New Straits Times*, November 2019. https://www.nst.com.my/news/government-public-policy/2019/11/542527/liew-mps-who-fail-declare-assets-after-dec-5-deadline

Aziz, Adam. "MACC Asset Declaration List Shows 48 Millionaire Ministers, Deputies." *The Edge Markets*, July 2020. Accessed 26 November 2020. https://www.theedgemarkets.com/article/macc-asset-declaration-list-heres-what-it-shows

Bernama. "Revise Anti-Corruption Laws, Impose Harsher Penalties – Experts." *The New Straits Times*, September 2022. https://www.nst.com.my/news/nation/2022/09/835054/revise-anti-corruption-laws-impose-harsher-penalties-experts

Choong, Jerry. "Transparency International Malaysia Calls for Legislation Mandating Asset Declaration by Politicians." *The Malay Mail*, 2021. https://www.malaymail.com/news/malaysia/2021/07/19/transparency-international-malaysia-calls-for-legislation-mandating-asset-d/1991079.

Gabriel, Cynthia. "For Tracking Unexplained Wealth, C4 Recommends Tightening of MACC Act." *Malaysia Kini*, 2017. Accessed June 15, 2018. https://www.malaysiakini.com/letters/379694.

Gunaratnam, Shanti. "Ex-Youth and Sports Ministry Secretary, 3 Directors Charged with Money Laundering." *The News Straits Times,* April 2016. https://www.nst.com.my/news/2016/04/140654/ex-youth-and-sports-ministry-secretary-3-directors-charged-money-laundering

Hammim, Rizalman. "Malaysia Drops More Points in Global Corruption Index." *The New Straits Times*, January 31, 2023. Accessed 5 May 2023. https://www.nst.com.my/news/nation/2023/01/875201/malaysia-drops-more-points-global-corruption-index

Universiti Utara Malaysia

Hassan, Mohd Sidek. "EAIC Committed to Addressing Integrity Issues, Challenges, says Chairman." *The Star,* March 2023. https://www.thestar.com.my/news/nation/2023/03/21/eaic-committed-to-addressing-integrity-issues-challenges-says-chairman

Head, Jonathan. "Najib Razak: Malaysian Ex-PM Gets 12-Year Jail Term in 1MDB Corruption Trial." *BBC News,* 2020. https://www.bbc.com/news/world-asia 53563065.

Idris, Ahmad Naqib. "Malaysia Drops Five Spots to 62 in TI-M's Corruption Index Ranking." *The Edge Markets*, 2022. Accessed March 10, 2022. https://www.theedgemarkets.com/article/malaysia-drops-five-spots-62-tims-corruption-index-rankings

Kaos Jr., Joseph. "MACC Questions PKR Youth's Adam Rosli over His Wealth." *The Star,* February 2017. https://www.thestar.com.my/news/nation/2017/02/10/macc-queries-pkr-youth-chief-over-his-wealth/?src=ilaw

Khairulrijal, Rahmat. "Ku Nan Freed of Corruption Conviction." *The New Straits Times,* 2021. https://www.nst.com.my/news/crime-courts/2021/07/708805/ku-nan-freed-corruption-conviction.

Latiff, Rozanna. "Malaysian ex-PM Najib goes to Jail for Graft after Losing Final Appeal." *Reuters,* 2022. https://www.reuters.com/world/asia-pacific/malaysias-ex-pm-najib-arrives-top-court-final-leg-1mdb-appeal-2022-08-23/.

Leoi Leoi, Sim. "Malaysia Ratifies UN Convention Against Corruption." *The Star*, 2008. Accessed June 15, 2017. http://www.thestar.com.my/news/nation/2008/09/17/malaysia-ratifies-un-convention-against-corruption/.

Lo, Andrew. "Broad Impact of Bribery." *The Star Online,* 2017. Accessed June 15, 2018. http://www.thestar.com.my/metro/views/2017/03/10/broad-impact-of-bribery-graft-takes-food-off-the-table-hampers-education-and-impedes-healthcare/.

Loheswar, R. "Report: Supposedly Rolls-Royce Owning Immigration Officer has Criminal Record, Secret Society Ties." *The Malay Mail*, 2020. Accessed October 5, 2021. https://www.malaymail.com/news/malaysia/2020/11/24/report-supposedly-rolls-royce-owning-immigration-officer-has-criminal-recor/1925512

Lokman, Tasnim, and Muhamading, Masriwanie. "GIACC to Handle Asset Declarations." *The New Straits Times*, 2018. Accessed September 15, 2018. https://www.nst.com.my/news/nation/2018/06/378125/giacc-handle-asset-declarations.

Marquez, Humberto. "Americas: Pioneers in the Fight Against Corruption." *Inter Press Service*, 1996. http://www.ipsnews.net/1996/03/americas-pioneers-in-the-fight-against-corruption.

Mayberry, Kate. "Najib Faces 1MDB Verdict as Malaysian Political Ground Shifts." *Al Jazeera*, July 28, 2020. https://www.aljazeera.com/news/2020/7/28/najib-faces-1mdb-verdict-as-malaysian-political-ground-shifts.

Moh, June. "Pandora Papers: Statement taken from former minister." *The Malaysian Reserve.* February 2023. https://themalaysianreserve.com/2023/02/14/pandora-papers-statement-taken-from-former-minister/

Mohan, Muhammad. "TI-Malaysia Urges Government to take Swift Action on Information related to the Pandora Papers." *Transparency International Malaysia.* https://www.transparency.org.my/pages/news-and-events/press-releases/ti-malaysia-urges-government-to-take-swift-action-on-information-related-to-the-pandora-papers

Mohsen, Amar Shah. "Fine, Suspension for MPs Who Don't Declare Assets." *The Sun Daily,* November 2019. https://www.thesundaily.my/local/fine-suspension-for-mps-who-don-t-declare-assets-BD1665892

Mohsen, Amar Shah. "Where did wealth of those implicated in Pandora Papers come from?" *The Vibes.* March 2023. https://www.thevibes.com/articles/news/86546/where-did-wealth-of-those-implicated-in-pandora-papers-come-from

Naz Harun, Hana, Salehuddin, Qistina, and Mohamed Radhi, Nor Ain. "Individuals named in Pandora Papers being investigated by MACC." *The New Straits Times.* February 2023. https://www.nst.com.my/news/nation/2023/02/880118/individuals-named-pandora-papers-being-investigated-macc

Nik Anis, Mazwin. "Low-Ranking Officer Owns Rolls Royce." *The Star,* November 2020. https://www.thestar.com.my/news/nation/2020/11/21/low-ranking-officer-owns-rolls-royce

Nizam, Fuad. "Wealth of Those in Power Should be Made Transparent with Asset Declaration Act." *The New Straits Times*, 2023. https://www.nst.com.my/news/nation/2023/04/900822/wealth-those-power-should-be-made-transparent-asset-declaration-act.

Ong, Justin. "MACC Nabs Three More Immigration officers, Seizes Luxury Cars including Rolls-Royce Over Ties to People-Smuggling Ring." *The Malay Mail,* 2020. Accessed September 10, 2020. https://www.malaymail.com/news/malaysia/2020/11/20/macc-nabs-three-more-immigration-officers-seizes-luxury-cars-including-roll/1924565

Pankaj, C., Kumar. "Corporate Liability. Are You Ready?" *The Star*, November 23. 2019. https://www.thestar.com.my/business/businessnews/2019/11/23/corporate-liability-are-you-ready.

Perimbanayagam, Kalbana. "Main Suspect in Customs Deputy Director-General, Nabbed." *The New Straits Times*, July 2014. https://www.nst.com.my/news/2015/09/main-suspect-customs-deputy-director-general-nabbed

Perimbanayagam, Kalbana. and Shah Yaacob, Mohd Azam. "Police: Total Value of Seized Items in 1MDB Probe around RM1.1B." *New Straits Times,* 2018. https://www.nst.com.my/news/crime-courts/2018/06/384569/police-total-value-seized-items-1mdb-probe-around-rm11b.

Ramendran, Charles. "Paying with His Life for Upholding The Law." *The Sun Daily,* September 2020. https://www.thesundaily.my/true-crimes/paying-with-his-life-for-upholding-the-law-JD4252685

Regencia, Ted. "Malaysia's Najib Guilty of All Charges in 1MDB-Linked Graft Case." *Al Jazeera*, July 28, 2020. https://www.aljazeera.com/news/2020/7/28/malaysias-najib-guilty-of-all-charges-in-1mdb-linked-graft-case.

Satar, Akhbar. "Declaration of Assets in All Branches of Govt A Huge Step Forward." *The New Straits Times*, September 2022. https://www.nst.com.my/opinion/columnists/2022/09/833569/declaration-assets-all-branches-govt-huge-step-forward

Satar, Akhbar. "Five Sentencing Philosophies in the Criminal Justice System." *The New Straits Times,* September 2022. https://www.nst.com.my/opinion/columnists/2022/09/828400/five-sentencing-philosophies-criminal-justice-system

Universiti Utara Malaysia

Satar, Akhbar. “Impose Severe Penalties for Corruption Offences.” *Malaysia Kini,* December 2014. https://www.malaysiakini.com/letters/284379

Satar, Akhbar. “It is Vital to Declare Assets.” *The Star,* August 27, 2016. https://www.thestar.com.my/opinion/letters/2016/08/27/it-is-vital-to-declare-assets

Satar, Akhbar. “There are Five Punishment Philosophies in the Criminal Justice System.” *Astro Awani,* September 2022. https://www.astroawani.com/berita-malaysia/there-are-five-punishment-philosophies-criminal-justice-system-379380

Yatim, Hafiz. “After Appeal Fails, Ex-PKR Ampang Youth Chief Goes to Jail for Giving Fake Documents, Statements to MACC.” *The Edge Markets,* March 2021. https://www.theedgemarkets.com/article/after-appeal-fails-expkr-ampang-youth-chief-goes-jail-giving-fake-documents-statements-macc

Yusof, Teh Athira. “MACC Enforces Corporate Liability Law Today.” *New Straits Times,* June 1, 2020. https://www.nst.com.my/news/nation/2020/06/597044/macc-enforces-corporate-liability-law-today.

Zainul, Emir. “Offshore Vessel Company First to be Charged with MACC Act’s New Corporate Liability Provision.” *The Edge Markets*, March 2021. https://theedgemalaysia.com/article/offshore-company-first-be-charged-under-maccs-new-law

Universiti Utara Malaysia

**Report**

African Union. *African Union Convention on Preventing and Combating Corruption*. Maputo, 2003.

Azhari, Aira Nur Ariana, and Lim Wei Jiet. *Separating the Attorney-General and Public Prosecutor: Enhancing Rule of Law in Malaysia: Problems Surrounding the Position of the Attorney General.*, 2016.

Burdescu, Ruxandra, Gary J Reid, Stephanie E Trapnell, and Daniel W Barnes. *Income and Asset Disclosure Systems: Establishing Good Governance through Accountability*. Washington, D.C., 2010.

*Comparative Overview: Criminalisation of Illicit Enrichment of Public Officials in Certain European Countries*. Parliament of Montenegro, Parliamentary Institute Research Centre. Podgorica, Montenegro, 2016.

*Corruption: A Glossary of International Criminal Standards Organisation*. Organisation For Economic Co-Operation and Development, 2007.

D. Morris, Stephen. "Forms of Corruption." *CESifo DICE Report* 9, no. 2 (2011): 10–14.

Dornbierer, Andrew. *Illicit Enrichment: A Guide to Laws Targeting Unexplained Wealth*. Basel Institute on Governance, 2021.

Gacheri Kamunde, Nelly. "The Crime of Illicit Enrichment under International Anti-Corruption Legal Regime." *The National Council for Law Reporting*. Last modified 2010. http://kenyalaw.org/kl/index.php?id=1891.

Global Financial Integrity, and (GFI). *Illicit Financial Flows to and from 148 Developing Countries: 2006-2015*. *Global Financial Integrity*, 2019.

Habershon, Alexandra, and Stephanie E. Trapnell. *Public Office, Private Interests: Accountability through Income and Asset Disclosure.* Washington, D.C.: Stolen Asset Recovery (StAR) & World Bank Publications, 2012.

Hamilton, Booz Allen. *Comparative Evaluation of Unexplained Wealth Orders*, 2012.

Heilbrunn, John R. *Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption*. Washington, D.C.: World Bank Institute, 2004.

Independent Commission Against Corruption. *2022 Annual Report: Independent Commission Against Corruption Hong Kong Special Administrative Region of the People's Republic of China*, 2022. https://www.icac.org.hk/icac/annual-report/2022/.

Langseth, Petter. "Prevention: An Effective Tool to Reduce Corruption." In *ISPAC Conference.* Vienna: United Nation Office for Drug Control and Crime Prevention, 1999.

Malaysian Anti -Corruption Commission (MACC). *Malaysian Anti-Corruption Commission Annual Report 2020*, 2020.

Malaysian Bar. *Memorandum for the Reform of the Malaysian Anti-Corruption Commission*, 2015.

Universiti Utara Malaysia

Martini, Maira. *Asset Declaration Regimes in Selected Asian Countries*, 2013.

OECD. *Asset Declarations for Public Officials: A Tool to Prevent Corruption.*, 2011. http://dx.doi.org/10.1787/9789264095281-en.

*People's Attitude towards Corruption and Anti-Corruption Commission,* Office of the Anti-Corruption Commission, January 2009.

Perdriel, Maud. *The Accumulation of Unexplained Wealth by Public Officials: Making the Offence of Illicit Enrichment Enforceable.*, 2012.

Regional Anti-corruption Initiative (RAI). *Rules and Experiences on Integrity Issues*. Sarajevo, 2012. www.rai-see.org.

The OECD Anti-Bribery Convention. *Managing Conflict of Interest in the Public Service.* Paris, 2004.

The United Nations Office on Drugs and Crime (ODC). *The Global Programme Against Corruption: UN Anti-Corruption Tool Kit*, 2004.

The World Bank. *Income and Asset Disclosure: Case Study Illustrations*. Washington, D.C., 2013.

United Nations Convention against Corruption. *Country Review Report of Malaysia*, 2013.

United Nations Convention against Corruption. *Country Review Report of Malaysia*, 2016-2021.

United Nations Convention against Corruption. *Country Review Report of Singapore,* 2010-2015.

**Thesis**

Abu-Morad, Mohannad Ahmad Musa. "An Analysis of the Illicit Enrichment Law and Prosecution Issues in Jordan." PhD diss., Universiti Utara Malaysia, 2016.

Farrales, Mark Jorgensen. "What Is Corruption? A History of Corruption Studies and the Great Definitions Debate" (2005): 1–48.

Halliru, Tijjani. "Ethno-Religious and Political Conflicts: A Study of North-Eastern Region of Nigeria." PhD diss., Universiti Utara Malaysia, 2012.

Universiti Utara Malaysia

Hong, Chin Chin. “Reforming the System of Asset Declaration in Malaysia as a Strategy to Combat Corruption.” Master’s thesis, International Anti-Corruption Academy (IACA), 2016.

Meskele, Mesay Tsegaye. “Criminalising and Prosecuting Illicit Enrichment in Corruption Cases.” University of the Western Cape (South Africa), 2019.

Meskele, Mesay Tsegaye. “The Legal Framework of Illicit Enrichment in Ethiopian Anti-Corruption Law.” Master’s thesis, Faculty of Law, University of the Western Cape, South Africa, 2012.

**Webinar**

Arshad, Mohd Mursyid. “Workshop on Qualitative Research and Qualitative Data Analysis.” Universiti Putra Malaysia. 2021.

Mohamad, Ani Munirah. “Module Webinar on Information on Qualitative Research Study: Data Management & Transcription.” Webinar, July 26, 2020.

Mohd Tobi, Siti Uzairiah. “Qualitative Data Analysis.” Virtual Summit Sekolah Penulisan Thesis. December, 2020.

**Webpage**

“Asset Declarations: An Effective Tool to Fight Corruption.” *Transparency International.* Accessed May 18, 2019. http://www.transparency.org/whatwedo/publication/working_paper_1_2014_asset_declarations_an_effective_tool.

“Background of IACAC.” *Organization of American States Secretariat for Legal Affairs,* 2011. Accessed August 30, 2020. https://www.oas.org/juridico/english/corr_bg.htm

“Corporate Liability Provision: What It Is, and How Will My Company Be Affected.” *The Association of Banks in Malaysia.* Accessed August 20, 2020. https://abm.org.my/archives/past-events-continual-learning/item/271-corporate-liability-provision-what-it-is-and-how-will-my-company-be-affected.

"Corporate Liability." *Malaysian Anti-Corruption Commission*. Accessed August 20, 2020. https://www.sprm.gov.my/en/prevention/prevention-strategy/inspection-and-consultation-2/corporate-liability.

"Corruption in Egypt." *Lexology, Law Business Research*. Last modified 2020. Accessed December 12, 2020. https://www.lexology.com/library/detail.aspx?g=26e2ddc8-95df-49ab-b2f2-e1b0ecde3c78.

"Corruption Perceptions Index." *Transparency International,* 2016. Accessed April 6, 2017.https://www.transparency.org/news/feature/corruption_perceptions_index_2016

"Corruption Perceptions Index." *Transparency International*, 2021. Accessed January 5, 2023. https://www.transparency.org/en/cpi/2021.

"Corruption Perceptions Index." *Transparency International*, 2022. Accessed March 10, 2023. https://www.transparency.org/en/cpi/2022/index/arg

"First Case of Section 17A of the MACC Act." *Transparency International Malaysia*. March 2021 https://www.transparency.org.my/pages/news-and-events/press-releases/first-case-of-section-17a-of-the-macc-act

"Hadith Narrated by Abdullah Bin Amr." *Ahadith.Co.Uk.* Accessed November 8, 2018.https://ahadith.co.uk/hadithbynarrator.php?n=Abdullah+bin+Amr&bid=15&let=A.

"Malaysian Anti-Corruption Commission." *Malaysian Anti-Corruption Commission*. Accessed June 25, 2017.http://www.sprm.gov.my/index.php/en/

"OP Selat (Insolence of Foreigners)." *Malaysian Anti-Corruption Commission.* Accessed June 5, 2023. https://www.sprm.gov.my/index.php?page_id=103&contentid=2871&cat=TOC&language=my

"Prevention Sector." *Malaysian Anti-Corruption Commission*. Accessed June 18, 2019. https://www.sprm.gov.my/index.php?id=21&page_id=91

"Section 17A MACC Act Enforced on 1st June 2020." *Malaysian Anti-Corruption Commission.* Accessed July 20, 2022. https://www.sprm.gov.my/index.php?page_id=103&contentid=669&cat=CN&language=en

"Signatures and Ratifications." *Inter-American Convention against Corruption*, 2014. Accessed August 30, 2020. http://www.oas.org/juridico/english/Sigs/b-58.html

"Surah Al-Baqarah [2]." *Quran.com*. Accessed December 12, 2018. https://quran.com/2.

"The ABCS of the CPI: How the Corruption Perceptions Index is Calculated." *Transparency International*. Accessed December 20, 2021. https://www.transparency.org/en/news/how-cpi-scores-are-calculated

"The Asset Declaration Portal." *Malaysian Anti-Corruption Commission.* Accessed January 18, 2022. https://mydeclaration.sprm.gov.my/

"The Assets Declaration Portal can be Access Today." *The Malaysian Anti-Corruption Commission,* July 2020. https://www.sprm.gov.my/index.php?page_id=105&contentid=503&language=en

"The Definition of Actuary." *Cambridge Dictionary*. Accessed January 8, 2022. https://dictionary.cambridge.org/dictionary/english/actuary

"The Definition of Enrichment." *Cambridge University Press*. Accessed December 12, 2018. https://dictionary.cambridge.org/dictionary/english/enrichment

"The Definition of Enrichment." *Oxford University Press*. Accessed January 21, 2019. https://www.oxfordlearnersdictionaries.com/definition/english/enrich

"The Financial Action Task Force." *The Financial Action Task Force*. Accessed January 5, 2024. https://www.fatf-gafi.org/en/the-fatf/what-we-do.html

"The Term of Illicit." *The Law Dictionary*. Accessed August 5, 2018. https://thelawdictionary.org/?s=ILLICIT

"Topline Report of Corruption Perceptions Index 2015." *Transparency International.* Accessed July 10, 2017. https://www.transparency.org/en/cpi/2015

"Types of Offences of Corruption." *Malaysian Anti-Corruption Commission Act 2009*. Accessed July 5, 2023.https://www.sprm.gov.my/index.php?page_id=75&articleid=481&language=en

"Types of Primary Data." *Reading Craze*, 2013. Accessed February 8, 2019. http://readingcraze.com/index.php/types-of-primary-data/

"What is Corruption." *Transparency International*. Accessed March 4, 2017. http://www.transparency.org/what-is-corruption/#define

"What is the Corruption Perceptions Index?." *Transparency International*, 2012. Accessed July 7, 2018. https://www.transparency.org/cpi2012/in_detail.

Business Transactions. "Ratification Status as of September 2023." Accessed October 25, 2023.https://web-archive.oecd.org/2023-09-22/159857-wgb-ratification-status.pdf.

Cambridge University. "Meaning of Proxy." Accessed July 1, 2023. https://dictionary.cambridge.org/dictionary/english/proxy.

Cohen, D. and Bernard, Crabtree. 2006. "*Qualitative Research Guidelines Project*." Accessed October 10, 2022. http://www.qualres.org/HomeSemi-3629.html.

EUR-Lex. "Council Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector." https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003F0568.

Gazi, Farhan. "Malaysia Among Top Countries for Illicit Money Outflows." *IMoney*. Last modified 2019. https://www.imoney.my/articles/malaysia-top-countries-illicit-money-outflows.

Universiti Utara Malaysia

Independent Commission against Corruption (ICAC) Hong Kong Special Administrative Region. “Balancing Forces.” Accessed May 20, 2023. https://www.icac.org.hk/en/about/power/check/balance/index.html.

Independent Commission against Corruption (ICAC). “Hong Kong Special Administrative Region.” Accessed May 20, 2023. https://www.icac.org.hk/tc/ops/duty/index.html.

Jimenez, Guillermo C. and Pulos, Elizabeth. 2016. “Good Corporation, Bad Corporation: Corporate Social Responsibility in the Global Economy and Corruption in International Business.” Accessed March 8, 2021. https://milnepublishing.geneseo.edu/good-corporation-bad-corporation/chapter/10-corruption-in-international-business/

Mada, M. “Safwat-Al-Sherif Sons Sentenced to 5-10 Years in Prison for Illicit Gains.” Last modified 2016. Accessed May 10, 2022. https://madamasr.com/en/2016/05/29/news/u/safwat-al-sherif-sons-sentenced-to-5-10-years-in- prison-for-illicit-gains/.

Malaysian Anti-Corruption Commission (MACC). “*Anti-Bribery Management System (ABMS)*.” Accessed May 15, 2022. https://www.sprm.gov.my/index.php?page_id=129&articleid=504&language=en.

Munandar, Aris. “*Syaria.com*.” Accessed January 18, 2019. http://syaria.com/361-beware-of-the-bribe.html.

OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. “Ratification Status as of September 2023.” Accessed October 25, 2023.https://web-archive.oecd.org/2023-09-22/159857-wgb-ratification-status.pdf.

Sutan, Sutinah. *A Sustainable Initiative towards Achieving Zero Tolerance to Corruption*. Kuala Lumpur, 2019. https://abm.org.my/archives/past-events-continual-learning/item/271-corporate-liability-provision-what-it-is-and-how-will-my-company-be-affected.

The OECD Anti-Bribery Convention. “Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.” Accessed October 26, 2023. https://www.oecd.org/corruption/oecdantibriberyconvention.htm.

The Central People's Government of the People's Republic of China. "Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China." Last modified 2013. https://www.gov.cn/test/2005-07/29/content_18298.htm.

The Commonwealth. "Tackling Corruption." Accessed February 19, 2023. https://thecommonwealth.org/our-work/tackling-corruption.

The Constitution of the People's Republic of China. "The Basic Law of The Hong Kong Special Administrative Region of The People's Republic of China." Accessed May 15, 2023. https://www.basiclaw.gov.hk/filemanager/content/en/files/basiclawtext/basiclaw_full_text.pdf.

The School for Higher and Professional Education (SHAPE). "Corruption Prevention Policy by the Prevention of Bribery Ordinance (POBO)." Accessed June 2, 2023. https://www.shape.edu.hk/corruption-prevent-policy.

Williams, A. 2006. "International Experience of Asset Declarations." *Transparency International*. Accessed September 15, 2021. http://www.u4.no/publications/international-experience-with-asset-declarations

**Working paper**

Amundsen, Inge. *Political Corruption: An Introduction to the Issues*. *Chr. Michelsen Institute : Development Studies and Human Rights*, 1999.

Bacarese, Alan, Hoang Manh Chien, Nguyen Tuong Dung, and Phan Thi Lan Huong. *Criminalising Illicit Enrichment to Fight Corruption: International Experiences and Lessons Learnt for Viet Nam*, n.d.

De Asis, Maria Gonzalez. *Anticorruption Reform in Rule of Law Programs*. Washington, D.C., 2006.

Djankov, Simeon, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer. "Disclosure by Politicians." *NBER Working Paper Series*. Last modified 2009. Accessed May 9, 2021. http://www.nber.org/papers/w14703.

Puddephatt, Andrew. "Corruption in Egypt." *Global partners and Associates* 28 (2012).

Thomas, James, and Angela Harden. *Methods for the Thematic Synthesis of Qualitative Research in Systematic Reviews*. NCRM Working Paper Series. London, England, 2007.

World Bank Group. *Enhancing Government Effectiveness and Transparency. The Fight Against Corruption*. Kuala Lumpur, Malaysia, 2020.

Universiti Utara Malaysia

# APPENDICES

Universiti Utara Malaysia

# Appendix 1.

## Authorisation Letter from UUM COLGIS

Universiti Utara Malaysia

**GHAZALI SHAFIE GRADUATE SCHOOL OF GOVERNMENT**
UUM Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
Universiti Utara Malaysia
06010 UUM SINTOK
KEDAH DARUL AMAN
MALAYSIA

Tel: 604-928 7751/7752
Faks (Fax): 604-928 7799
Laman Web (Web): www.gsgsg.uum.edu.my

**UUM/COLGIS/PEL : 901109**
25hb Ogos 2019

**KEPADA SESIAPA YANG BERKENAAN**

Tuan

**KEBENARAN MENGUMPUL MAKLUMAT PENYELIDIKAN**

Sukacita saya merujuk kepada perkara di atas.

Adalah dimaklumkan bahawa **NORATIKAH BINTI MUHAMMAD AZMAN NG (903113)** adalah pelajar Program Doktor Falsafah, di Ghazali Shafie Graduate School of Government, Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa, Universiti Utara Malaysia.

Bagi memenuhi keperluan pengajian, beliau perlu menyiapkan penyelidikan seperti yang dipersetujui oleh pihak kolej.

Sehubungan itu, adalah diharapkan agar pihak tuan dapat memberikan kerjasama di dalam pengutipan data dan maklumat berkaitan dengan penyelidikan pelajar ini.

Untuk pengetahuan tuan, penyelidikan ini adalah untuk tujuan akademik semata-mata dan semua maklumat adalah dirahsiakan.

Perhatian yang diberikan saya dahului dengan ucapan ribuan terima kasih.

Sekian, terima kasih.

**"ILMU BUDI BAKTI"**

Saya yang menjalankan amanah

**(MOHD SUKRI BIN OTHMAN)**
Penolong Pendaftar Kanan
Ghazali Shafie Graduate School of Government
Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
Universiti Utara Malaysia
Tel : 04-9287752 Fax : 04-9287799
e-mail : md_sukri@uum.edu.my

## Appendix 2.

## Consent Form for Respondents to Conduct the Interview

Universiti Utara Malaysia

**CONSENT FORM FOR INTERVIEWS: A QUALITATIVE STUDY**

**Title of thesis: An Analysis of the Law on Illicit Enrichment and Asset Declaration in Preventing Corruption: The Case of Malaysia.**

Dear Sir/Madam,

Thank you very much for accepting an interview with the researcher:

Noratikah binti Muhammad Azman Ng is a PhD student at University Utara Malaysia (UUM) Sintok, Kedah Malaysia.

The researcher is preparing a PhD thesis entitled: "An Analysis of the Law on Illicit Enrichment and Asset Declaration in Preventing Corruption: The Case of Malaysia."

The purpose of this study is to analyse the inadequacies of the laws and regulations on illicit enrichment and the asset declaration system in governing the problem of illicit enrichment in Malaysia.

The main aim of interviewing is to get the opinions and perspectives of the respondents, which will enrich the study based on your information and be documented academically by this study.

Therefore, research ethics require you to be informed of the following matters:

1. **Confidentiality**: Your personal information, such as your name, your position, or your workplace, is confidential, and your name will not be linked to the research materials and will not be identified or identifiable in the report or reports that result from the research.

2. **Permission to publish**: Your responses will be kept strictly confidential, and the researcher is not allowed to publish any information relating to the content of the interview or personal information without your permission to do so.

3. You have the right to decline or reject any question.

4. You have the right to end the interview at any time, even before the completion of the questions.

5. Your information, opinions, and suggestions that you will be making will be used solely for the aforesaid research purposes, and the researcher is not allowed to use the content of this interview totally or partially in any other way.

Universiti Utara Malaysia

6. This interview will be documented through audio recording and writing.

**Consent:** I agree for this interview to be written and audio recorded. I understand that the audio recording and contents of this interview will be used only for the analysis of the research. It is for the academic purposes of the aforesaid study only. Besides, I understand that my participation is voluntary, and I am free to withdraw at any time without giving any reason and without any negative consequences. I agree to take part in this interview.

**Signature of the respondent :**

**Name :**
**Position :**
**Date :**

Universiti Utara Malaysia

# Appendix 3.

## Interview Questions to the Respondents

Universiti Utara Malaysia

## INTERVIEW QUESTIONS.

The respondents are classified into 3 groups: 1, 2, and 3 accordingly, the questions are divided considering their respective fields of study as a guideline in the formulation of questions. Basically, the researcher is considering a few factors in creating the interview questions, namely, illicit enrichment, financial disclosure, corruption, and institutional mechanisms.

Besides, the other criteria that systematise the questions accordingly are literature review, problem statement, research questions, and objectives. The questions are categorised as follows:

- General Questions (G.Q.) are designed for each group consistent with the profession, position, or scope of work.
- Standard Questions (S.Q.) ask the respondents to approach their concepts based on their knowledge or experience.
- Common Questions (C.Q.): to encourage the respondents to approach their concept based on their general experience.

Universiti Utara Malaysia

The interview session is conducted to answer the following Research Objectives:

1. To study the laws on illicit enrichment that are enforced to eradicate the problem of corruption in Malaysia.
2. To analyse the rules pertaining to the asset declaration system that can prevent the problem of illicit enrichment.
3. To examine the regulatory legal frameworks for illicit enrichment from other countries that should be used as a reference for Malaysia.
4. To recommend improvements to the illicit enrichment law for the prevention of corruption.

**GROUP 1**

**QUESTIONS TO MACC OFFICERS**

| | **QUESTIONS ON ILLICIT ENRICHMENT & AMLA** |
|---|---|
| 1. | Can you give me a brief explanation on the legal framework of the MACC? |
| 2. | What do you think about the current anti-corruption law in Malaysia? |
| 3. | According to your experience, what are the obstacles facing by MACC to prevent corruption in Malaysia? |
| 4. | What is your opinion on illicit enrichment? |
| 5. | What do you think about the issue of illicit enrichment/living beyond means among public officers in Malaysia? |
| 6. | Based on your experience, what do you think about the issue of money laundering in Malaysia? |
| 7. | What is the relationship between illicit enrichment and money laundering? |
| 8. | Section 36 of MACC Act did not specify that illicit enrichment is an offence in Malaysia. Unlike in Hong Kong, they have ((Hong Kong Prevention of Bribery Ordinance 1971) which has specific provision that state illicit enrichment is an offence.<br><br>What do you think about Section 36 of MACC Act in Malaysia? |
| 9. | Is illicit enrichment being a crime in Malaysia?<br><br>If YES – Please specify the law<br><br>If NO - Is there any law that has similar terms regarding illicit enrichment crime? Eg; AMLA, Code of ethics or any other law? Please specify. |
| 10. | How do you see the effectiveness of Section 36 in tackling issue of illicit enrichment in public sectors? Is it effective or not. |
| 11. | Did MACC have ever investigated any cases related to illicit enrichment in Malaysia? |

| | |
|---|---|
| 12. | What is the challenges face by MACC when investigating those who are rich beyond their means? |
| 13. | How to strengthen the law of illicit enrichment in preventing illicit enrichment crime?<br>-suggestion of ideas |
| 14. | What are the advantages of having a specific illicit enrichment law? (such as in Hong Kong) |
| 15. | What are the limitations of section 36 of MACC Act? |
| 16. | Are the limitations (section 36), cause any disadvantages to the issue illicit enrichment in Malaysia? |
| 17. | Based on your experience, which country practise the best illicit enrichment law and anti-money laundering law at the moment? |
| 18. | Do you have any suggestion on the law of illicit enrichment in prevention of corruption? |
| | **QUESTIONS ON FINANCIAL DISCLOSURE / ASSET DECLARATION** |
| 19. | From your opinion, what do you think about financial disclosure system in Malaysia? |
| 20. | What do you think about the confidentiality of the asset declaration/financial disclosures? |
| 21. | Did you ever use asset declarations statement submitted by public officers in your investigations/prosecutions of corruption/illicit enrichment cases? |
| 22. | Does it have evidentiary value and were the courts accepting such evidence (asset declaration statement)? |
| 23. | Why do you think it's important for public officers to declare their income? |
| 24. | Is there any relation between illicit enrichment offense and financial disclosure? |
| 25. | How do you think financial disclosure can prevent illicit enrichment? |
| 26. | Previously, the issue of asset declaration is governed under code of ethics and government circular, and also with the new government, the code of ethics have been |

Universiti Utara Malaysia

| | |
|---|---|
| | improved by making it compulsory for all ministers and public officers to declare their assets. MACC also have been given mandate to verify and monitor the asset declaration among ministers and public officers.<br><br>So, what do you think about this issue?<br><br>And what is your hope regarding this issue? |
| 27. | Is the improved version of 'code of ethics' for asset declaration is sufficient to prevent the problem of illicit enrichment in Malaysia? |
| 28. | Additional information from MACC Officer. |

**GROUP 2**

**QUESTIONS TO LEGAL SCHOLARS**

| | |
|---|---|
| 1 | What do you think about the anti-corruption legal framework in Malaysia? |
| 2 | What do you think about illicit enrichment? |
| 3 | What is the relationship between the increase of wealth and the offense of illicit enrichment? |
| 4 | Do you think that any case on the increase of wealth of the public officers can be considered as some sort of illicit enrichment? |
| 5 | Section 36 of MACC Act did not specify that illicit enrichment is an offence in Malaysia. Unlike in Hong Kong, they have ((Hong Kong Prevention of Bribery Ordinance 1971) which has specific provision that state illicit enrichment is an offence.<br><br>What do you think about Section 36 of MACC Act in Malaysia? |
| 6. | Is illicit enrichment being a crime in Malaysia?<br><br>If YES – Please specify the law<br><br>If NO - Is there any law that has similar terms regarding illicit enrichment crime? E.g., AMLA, Code of ethics or any other law? Please specify. |
| 7. | How do you see the effectiveness of section 36 in curbing/tackling illicit enrichment in public sectors? |

| | |
|---|---|
| 8. | From your legal and practical view, what do you think about illicit enrichment law in Malaysia? Is it adequate? |
| 9 | What are the advantages of having a specific illicit enrichment law? |
| 10 | Do you see any limitation of illicit enrichment law in Malaysia? |
| 11 | Based on your experience, which country practise the best illicit enrichment law at the moment? |
| 12 | How to strengthen the law of illicit enrichment in preventing illicit enrichment crime? |
| 13 | Based on your previous experience as a deputy public prosecutor for SPRM,<br><br>Is there any case under section 36 ever being brought before court?<br><br>If no – Are there any case that similar to illicit enrichment has been referred to the court? |
| 14 | What are the challenges when investigating those who are rich beyond their means? |
| 15 | According to your experience, what are the challenges facing by MACC to prevent corruption in Malaysia? |
| | **QUESTIONS ON FINANCIAL DISCLOSURE / ASSET DECLARATION** |
| 16 | What do you think about financial disclosure in Malaysia? |
| 17 | Do we need any specific law to govern this issue? |
| 18 | What do you think about the confidentiality of the financial disclosures? |
| 19 | Is there any relation between illicit enrichment offense and financial disclosure? |
| 20 | How do you think financial disclosure system can prevent illicit enrichment? |
| 21 | Why do you think it's important for public officers to declare their income? |
| 22 | Previously, the issue of asset declaration is governed under code of ethics and government circular, and also with the new government, the code of ethics has been improved by making it compulsory for all ministers and public officers to declare their assets. MACC also have been given mandate to verify and monitor the asset |

Universiti Utara Malaysia

| | |
|---|---|
| | declaration among ministers and public officers.<br><br>So, what do you think about this issue?<br><br>And what is your hope regarding this issue? |
| 23 | Any additional comments on the issue of illicit enrichment and financial disclosure system in Malaysia. |

**GROUP 3**

**QUESTIONS TO DEPUTY PUBLIC PROSECUTORS & LEGAL PRACTITIONERS**

| | **QUESTIONS ON CORRUPTION & ILLICIT ENRICHMENT** |
|---|---|
| 1. | What do you think about the current anti-corruption legal framework in Malaysia? |
| 2. | According to your experience, what are the obstacles facing by MACC to prevent corruption in Malaysia? |
| 3. | What is your opinion on illicit enrichment?<br><br>-your definition of illicit enrichment |
| 4. | What do you think about the issue of illicit enrichment among public officers in Malaysia? |
| 5. | What is the relationship between the increase of wealth and the offense of illicit enrichment? |
| 6. | Do you think that any case on the increase of wealth of the public officers can be considered as some sort of illicit enrichment? |
| 7. | Section 36 of MACC Act did not specify that illicit enrichment is an offence in Malaysia. Unlike in Hong Kong, they have (Hong Kong Prevention of Bribery Ordinance 1971) which has specific provision that state illicit enrichment is an offence.<br><br>What do you think about Section 36 of MACC Act in Malaysia? |
| 8. | Is illicit enrichment being a crime in Malaysia? |

Universiti Utara Malaysia

| | |
|---|---|
| | If YES – Please specify the law<br><br>If NO - Is there any law that has similar terms regarding illicit enrichment crime? E.g., AMLA, Code of ethics or any other law? Please specify. |
| 9. | Does the presumption of innocence conflict with the criminalization of illicit enrichment? |
| 10. | How do you see the effectiveness of Section 36 in tackling issue of illicit enrichment in public sectors?<br><br>Is it effective or not. |
| 11. | From your LEGAL & PRACTICAL view, what do you think about the current illicit enrichment law in Malaysia?<br><br>Is it adequate? |
| 12. | How to strengthen the law of illicit enrichment in preventing illicit enrichment crime?<br>-suggestion of ideas |
| 13. | What are the advantages of having a specific illicit enrichment law?<br>(such as in Hong Kong) |
| 14. | What are the limitations of section 36 of MACC Act? |
| 15. | Are the limitations (section 36), cause any disadvantages to the issue illicit enrichment in Malaysia? |
| 16. | What are the challenges when investigating those who are rich beyond their means? |
| 17. | Based on your experience, which country practise the best illicit enrichment law at the moment? |
| 18. | What are the efforts done by the AGC of Malaysia in preventing issue illicit enrichment or those who are rich beyond their means? |
| 19. | Do you have any better suggestion on the law of illicit enrichment in prevention of corruption? |
| 20. | Do you agree as a legal practitioner, to criminalise IE as a specific offence? |

Universiti Utara Malaysia

| | |
|---|---|
| | **QUESTIONS ON FINANCIAL DISCLOSURE / ASSET DECLARATION** |
| 21 | From your **LEGAL & PRACTICAL** view, what do you think about financial disclosure system in Malaysia? |
| 22. | What do you think about the confidentiality of the asset declaration/financial disclosures? |
| 23. | Did you ever use asset declarations statement submitted by public officers in your investigations/prosecutions of corruption/illicit enrichment cases? |
| 24. | Does it have evidentiary value and were the courts accepting such evidence (asset declaration statement)? |
| 25. | Why do you think it's important for public officers to declare their income? |
| 26. | Is there any relation between illicit enrichment offense and financial disclosure? |
| 27. | How do you think financial disclosure can prevent illicit enrichment? |
| 28. | Previously, the issue of asset declaration is governed under code of ethics and government circular, and also with the new government, the code of ethics has been improved by making it compulsory for all ministers and public officers to declare their assets. MACC also have been given mandate to verify and monitor the asset declaration among ministers and public officers.<br><br>So, what do you think about this issue?<br><br>And what is your hope regarding this issue? |
| 29. | Is the improved version of 'code of ethics' for asset declaration is sufficient to prevent the problem of illicit enrichment in Malaysia? |
| 30. | Additional information from respondent. |

Universiti Utara Malaysia

## Appendix 4.

## Respondents' Years of Experience Summary

Universiti Utara Malaysia

| List of Respondents | Respondents' Years of Experience Summary |
|---|---|
| Respondent 1 | He has 13 years of service with the MACC. |
| Respondent 2 | He has 25 years of service with the MACC, starting with BPR in 1993 at MACC Perlis. He has also served with MACC Kedah, MACC Wilayah Persekutuan, and MACC headquarters in Putrajaya. |
| Respondent 3 | He has 7 years of experience with the AGC, including 3 ½ years as a Deputy Public Prosecutor (DPP) in the Penang State Legal Department (handling general crimes) and 3 ½ years as a DPP with MACC, assigned to the classified unit. He handled appeal cases nationwide while based at headquarters. |
| Respondent 4 | He served 15 years with MACC as a Deputy Public Prosecutor (1998-2013).<br>He is currently with the AGC, handling general crime. |
| Respondent 5 | Senior Assistant Commissioner in the Operation Target Branch, Anti-Money Laundering (AML) Division, MACC. A government expert appointed to review EU countries under UNCAC. |
| Respondent 6 | Director of Financial Analysis, Financial Analysis Division, MACC, Section 36 unit. He has been working with the MACC since 2006 (formerly BPR).<br>He recently joined the Financial Analysis Division in 2020. |
| Respondent 7 | He began his service at the AGC as a legal officer, and from July 2009 to December 2009, he worked as a Deputy Public Prosecutor (DPP) in the Commercial Crime Unit. He then moved to the Penang State Legal Office as a DPP from January 1, 2010, to September 2011. From September 2011 to March 2019, he served as a DPP at MACC Pulau Pinang. Since March 2019, he has been working as Federal Counsel at the Legal Advisor's Office. |
| Respondent 8 | He has been a DPP for the past 10 years with the AGC, including 2 years with MACC and 1 year in MACC Penang. |
| Respondent 9 | He has been a practising litigation lawyer in civil and criminal law since 1995 and served as a part-time lecturer in Criminal Procedure and Evidence from around 2009 until 2016. He has conducted trials in Magistrate Courts, |

Universiti Utara Malaysia

| | |
|---|---|
| | Sessions Courts, High Courts, the Court of Appeal, and the Federal Court. He has been in practise for almost 26 years. Before becoming a lawyer, he was a Town Planning Officer with the Kuala Lumpur City Hall. He also holds a Master's degree in Urban and Regional Planning from the University of Hawaii at Manoa. |
| Respondent 10 | He has experience since 1987, starting as a qualified teacher and a lawyer. He has been a practitioner in both civil and criminal law. From 1987 to 2002, he was an external LLB student studying Land Law and Evidence Law. He has had experience handling corruption cases for the past 34 years.<br><br>He was a lecturer at UUM, teaching criminal procedure codes and evidence from 1987 to 2002. During that time, he also taught at various government agencies, including MACC, where he trained practicing lawyers and enforcement agencies such as Customs and Immigration. |

Universiti Utara Malaysia