
Issues and Perspectives in Business and Social Sciences

Embracing corporate governance and whistleblowing in Malaysia: A conceptual review

Wong Hua Siong^{1*}, Chang Ching Siew²

¹Faculty of Law, Multimedia University, Melaka

²Faculty of Business, University Malaya-Wales (UM-Wales), Kuala Lumpur

*correspondence: hswong@mmu.edu.my

Abstract

Whistleblowing is an act of disclosing any wrongdoing or offence to the enforcement agency by an informer known as whistleblower, and this action would result in a conflict of interest for an individual, institution or society. Some may argue that whether it is appropriate for a whistleblower to reveal other people's mismanagement or someone's disloyalty to the company that employed him or her. This research applied qualitative study to analyse numerous primary and secondary data sources via library-based research in order to investigate the concerns and difficulties that whistleblowers encounter, as well as the relevant laws that could protect their privacy and interest. Meanwhile, the law of whistleblowing from the selected countries had been examined and the use of the valuable Islamic concept of good corporate governance had been adopted too. In fact, many countries have enacted relevant legislation to recognise the significance of whistleblowing to promote good governance in various institutions. Whistleblowers in Malaysia are protected by the Whistleblower Protection Act 2010 ('WPA 2010') as one of the efforts to demonstrate Malaysia's commitment in reducing bribery and improper action in the institutions.

Keywords:

Corporate governance;
Islamic concept;
Malaysia;
Whistleblower
protection;
Whistleblowing.

Received May, 2023

Accepted July, 2023

Published July, 2023

1. Introduction

The Whistleblower Protection Act 2010 ('WPA 2010') was passed by the Parliament of Malaysia and came into force on 15 December 2010 as part of Malaysia's efforts to uphold its commitments under the United Nation Convention Against Corruption. With reference to sections 2 and 6 of the WPA 2010, it defines whistleblower as improper conduct which may involve disciplinary offence or criminal offence if proved was disclosed to the enforcement agencies by any informer. Although one of the purposes of WPA 2010 is to protect the identity of the informer, the informer who is also known as whistleblower is still concerned very much about his identity and confidentiality and as such relevant protections are required to protect the identity of the whistleblower. Few laws in Malaysia give protection to the whistleblower such as Securities Commission Malaysian Act 1993,¹ Capital Market & Services Act 2007,² Companies Act 2016³,

¹ Act 498.

² Act 671.

³ Act 777.

Witness Protection Act 2009⁴ and Malaysian Anti-Corruption Commission Act 2009.⁵ The question that arises is to what extent have these laws given the sufficient protection on the identity of the whistleblowers in Malaysia.

According to the yearly statistics report released by the Malaysian Anti-Corruption Commission (MACC) in 2022, 909 people were detained and found guilty of corruption and other crimes in Malaysia (MACC, 2022). Until the month of May 2023, the statistic has climbed to 583 arrestees (MACC, 2023). Certainly, these numbers are not able to reflect the overall scenario as there are also many unreported cases left unknown to the relevant authorities.

Nowadays, as whistleblowing has garnered much attention in corporate sectors, specifically organisational laws and corporate governance, prompt and visible company law enforcement and optimal corporate governance are deemed necessary. Internal or external whistleblowing could be from any level in an organisation (Chartered Institute of Internal Auditors, 2021). Effective corporate governance should go beyond specific company interests to regard public requirements. Watchman (2004) implied that “whistle-blowers are citizen activists who are witnesses to wrongdoing and seek to correct it. They play a vital role in an open, democratic society by holding our institutions accountable to the people they serve.” On another note, Pascoe and Rachagan (2005) emphasised that “whistleblowing is a term used to describe the disclosure of information by someone who reasonably believes such information is evidence of a contravention of any laws or indicates mismanagement, corruption or abuse of authority.” In Malaysia, the former Chairman of the Securities Commission of Malaysia (SSM), namely Datuk Zarina Anwar (Zarina, 2003) stated that “whistleblowing is a term used to describe the disclosure of information that one reasonably believes to be evidence of contravention of any laws or regulation or information that involves mismanagement, corruption, or abuse of authority. The whistleblower is like the referee in a football game, using his/her whistle to call a foul.”

Whistleblowers encompass organisational employees, government staff, contractors, or suppliers who consciously disclose knowledge of any wrongdoings (fraud and corruption) to the general public or enforcement bodies. Such people typically divulge information on any illegal activities occurring within companies or departments. Specific laws exist to protect whistleblowers from victimisation such as job dismissals or workplace mistreatments. Additionally, most organisations implement distinct policies that require workers to report such incidents. For example, internal and external whistleblowers could file lawsuits or complaints to enforcement agencies for criminal investigations against organisations or departments. Internal whistleblowers imply people who disclose improper action or deception, or disorderliness to senior organisational officers, such as the Head of Human Resources or Chief Executive Officer (CEO). Meanwhile, external counterparts disclose wrongdoings such as fraud, deception, corruption, or other acts that mislead stakeholders to individuals outside the company, the media, police, and enforcement bodies.

Whistleblowers have garnered much popularity and acknowledgement in corporate sectors over the years. Despite the need for employer loyalty, employees are obliged to divulge unethical organisational conduct to the general public in avoiding the collapse of large-scale companies and adverse effects to stakeholders. Nevertheless, whistleblowers often encounter job loss and retaliation for their disclosure. For example, such individuals are treated as company ‘traitors’ although their actions largely benefit companies and the general public.

Typically, whistleblowing denotes actions that divulge illegal, unethical, and incorrect public or private company information or activities. Notably, such reporting could be performed internally (the company management) or externally (third parties). Vigilance is also deemed essential to

⁴ Act 696.

⁵ Act 694.

mitigate company malpractice or wrongdoing. This study aims to examine (i) whistleblowers' privacy, concern and interest, and well-being and (ii) optimal corporate governance elements. Additionally, the research analysed whistle-blowers' legal positions in other nations, such as Australia, the United Kingdom, America, New Zealand, and Malaysia with recommendations to incorporate the Islamic notion of whistleblowing and effective corporate governance.

2. Research Methodology

This research applied qualitative study to analyse numerous primary and secondary data sources via library-based research in order to investigate the concerns and difficulties that whistleblowers encounter, as well as the relevant laws that could protect their privacy and interest. Meanwhile, the law of whistleblowing from the selected countries had been examined and the use of the valuable Islamic concept of good corporate governance had been adopted too.

3. Discussion

Prior to enforcement of the WPA 2010, there were no legislation that specifically regulated "whistleblowing" or protect whistleblower in Malaysia. One might conclude that it was developed because of the Internet era and the fact that whistleblowing had evolved into a widespread occurrence. The WPA 2010 may need to be revised as few issues need to be taken note of, and that is the only important argument to make in this situation.

Section 2 of the WPA 2010 defines the particular enforcement agencies who the whistleblower could report the improper conduct to. Generally, these enforcement agencies include Royal Malaysian Police Force, Malaysian Anti-Corruption Commission, Royal Malaysian Customs Department, Road Transport Department, Immigration Department of Malaysia, Securities Commission and Companies Commission of Malaysia (Che Abu Bakar & Mohamad Mangsor, 2022). From 2019 until 2022, Malaysia's Corruption Perceptions Index (CPI) has fallen from 53 points to 47 points (Transparency International Malaysia, 2022) and of course Malaysians have perceived that most of these enforcement agencies are considered as the most corrupt institutions. With the loss of confidence, the whistleblowers may not want to come forward to report the improper conduct or wrongdoings.

Secondly, section 6 of the WPA 2010 in fact restricts certain acts of disclosure that will not be protected under WPA 2010 as whistleblower has to ensure that such disclosure is not prohibited by any written law, namely Malaysia Official Secrets Act 1972, Income Tax Act 1967, Witness Protection Act 2009 and Financial Services Act 2013. Thus, the implications of the sections 2 and 6 of the WPA 2010 are the whistleblowers may not have proper channels to disclose the improper conduct and any act of wrongdoings, and they may face any legal prosecution if they violate the section 6 of the WPA 2010. These limitations, which prevent people from reporting wrongdoing, undermine the WPA 2010's primary goal of promoting and facilitating the exposure of unlawful behaviour.

Furthermore, pursuant to section 11(1) of the WPA 2010, protection given to the whistleblower could be revoked by the enforcement agencies under certain circumstances. It means the protection for whistleblower is not absolute. Thus, making a provision for the establishment of an independent committee to oversee the issue on the revocation of whistleblower protection is required. This body should have the authority to supervise the enforcement agencies' decisions to revoke the whistleblower protection.

Specific whistleblowing cases have been documented over the years. In November 1974, a chemical technician namely Karen Silkwood stated a severe and widespread health and safety

issue at the Kerr-McGee plant in Oklahoma, America to the Atomic Energy Commission. Silkwood's irrefutable disclosure led to the discovery of plutonium contamination and subsequent appointment with a New York Times reporter with sufficient proof (O'Dell, n.d.). Nonetheless, Silkwood lost her life in a mysterious car accident which cause was never officially confirmed. In other words, Silkwood was murdered for whistle-blowing a health and safety infraction. Meanwhile, Mr. Edward Snowden has become the well-known whistleblower in 2013 when he revealed the intelligence-gathering surveillance programmes run by the United States National Security Agency (NSA) when he was the former intelligence contractor in NSA (The Guardian, 2013).

In Malaysia, there were few famous whistleblower cases in which whistleblowers became the 'victim'. For example, 56-year-old Dr. Syed Omar Syed Agil sought whistleblower protection for allegedly exposing his colleague's financial misconduct at Institut Profesional Baitulmal Sdn. Bhd. (IPB) (The Star, 2017). Notably, this is the first instance of a Malaysian case using a legal procedure to request relief under WPA 2010. The court held that IPB was unable to demonstrate the reason Dr. Syed Omar's unfavourable treatment was unrelated to his sharing of information with the police.

Meanwhile, in the case of *Rafizi Ramli v. Public Prosecutor* (2014), the appellant was charged in the Sessions Court for committing an offence under s. 97(1) of the Banking and Financial Institutions Act 1989 (this Act has been repealed and replaced with the Financial Services Act 2013) involving of revealing the secret banking information of few companies and a customer banking documents of the Public Bank Berhad through media personnel and a newspaper reporter. The appellant raised that the charge against him was against the public policy because he is a whistleblower who has exercised good faith to disclose a wrongdoing acts, i.e., corruption and abuse of public funds. Unfortunately, the appeal was dismissed on the basis that it was premature for the court to decide on it. Additionally, the court made no comments or inquiries on the public policy governing whistleblowers, and it makes the whistleblowers feel that it is insecure despite the existing WPA 2010.

Future thereto, Rafizi Ramli was also charged under the Official Secret Act 1972⁶ for taking 98 pages of the IMDB audit report without authorisation and revealed it to a press conference. He was also not given protection under WPA 2010, but he was accused of possessing secret documents in violation of the law and leaking them to the public via the media. In another case, Rafizi Ramli was sued for defamation for the issue of Majlis Amanah Rakyat's ('MARA') misappropriation of more than RM60 million public funds (*Khairul Azwan Harun v. Mohd Rafizi Ramli*, 2016). In this case, the Justice S Nantha Balan held that Rafizi Ramli has in the past publicly exposed numerous mega-scandals and functions in a similar capacity to a whistleblower. However, a whistleblower is not exempted from the general defamation legislation and is in the same situation as any other person.

On the other hand, in the case of *Rokiah Mohd Noor v. Menteri Perdagangan Dalam Negeri, Koperasi & Kepenggunaan Malaysia & Ors And Another Appeal* (2016), the Court of Appeal has decided that in order for a whistleblower to be protected under WPA 2010, he needs to disclose the improper conduct or wrongdoing act to the enforcement agencies and not to the third parties who are not the enforcement agencies within the meaning of section 2 of the WPA 2010. As such, the appellant was not entitled to seek the protection under section 10(1) of the WPA 2010. In this case, the first appellant, Rokiah was a former Deputy Chief Executive Officer (Operations) of the Companies Commission of Malaysia (CCM). She was with another appellant, namely Azryain, the ex-Director of Training Academy of CCM. Both of them had written a letter which contained a series of outrageous and destructive allegations against CCM to the third parties. The Disciplinary

⁶ Act 88.

Committee of the CCM found both of them guilty because their action was irresponsible, baseless and as a result have discredited to CCM.

Meanwhile, Justice Hamid Sultan Abu Backer, the retired Court of Appeal judge had filed a 65 pages affidavit in February 2019 outlining allegations of judicial misconduct involving numerous judges who had meddled in various high-profile cases (Bernama, 2021). Due to this revelation, Judges' Ethics Committee ('JEC') suspended Justice Hamid's tenure from 4 February 2020 until 27 August 2021, and this decision was made without the presence of Justice Hamid. The manner in which Justice Hamid was treated after coming forward with a significant accusation of judicial misconduct that could further tarnish the judiciary serves as an example of how inefficient the current system is for protecting those who come forward with information. He was subjected to negative action that denied him due process and seriously jeopardised his judicial career rather than providing the protection he requires, which is essential to conducting an effective inquiry into the situation.

The aforementioned incidents show that the safeguards for whistleblower under WPA 2010 are still fictitious and pointless. As shown in these instances, the whistleblowers who came forward to report unethical practises or offences that they became aware of while performing their duties paid a steep price for doing so. As a result, some of them may have loss of employment, being investigated, or prosecuted etc.

Thus, discussions on whistleblower complexities are vital as whistleblowing is an intricate task. Only a few individuals engage in whistleblowing as employees with access to company information would eventually encounter retaliation from the company management. Following Datuk Zarina Anwar (Zarina, 2003), who said "let us face it. It is not easy for the whistleblower to disclose information on the abuse, mismanagement, or corruption that he/she believes is taking place within the work environment especially if the transgressors are people that he/she knows and works closely with...The general impression of a whistle-blower thus becomes someone who is not a team player, who has the need for personal aggrandizement, or has a strong sense of paranoia".

Whistleblowers could encounter one of the following intricacies, including perceived disloyalty to the company; risk of unemployment when labelled as whistleblower; risk of job dismissal; risk of being sued in court for information disclosure; discrimination as traitors who are against the 'team'; and being passed over for promotion by superiors.

The aforementioned issues are not exhaustive as whistleblowers face numerous explicit and implicit retaliation. Thus, most employees remain silent despite being aware of organisational misconduct. Such attitudes induce adverse implications in the long term. In this vein, the proponents of whistleblowing strive for the integration of protection laws with legal systems to promote whistleblowing. Based on a survey report, over 50% of workers are reluctant to freely express opinions at work following the fear of vengeance in companies that "shoot the messenger" following unfavourable outcomes (Discovery Surveys Inc., 2023). As such, workers who are concerned about job insecurity prefer to remain silent. Low management responsiveness could be another factor as employees' opinions are not acknowledged at managerial levels. Additionally, low employer-employee transparency instigates adverse implications, such as unidentified issues, the disregarding of good notions, criticisms of manager-employee rapport, and low motivation as workers are not psychologically committed to their work (Barnett, 1992).

The senior management should encourage workplace transparency. Following past experience, most workers feel neglected or embarrassed when expressing opinions, specifically regarding whistleblowing. Thus, senior managers should seek employees' opinions and practice active listening to facilitate direct reporting and novel ideas among employees. For example, companies

could provide suggestion boxes to improve workplace transparency. Workers could privately and confidentially convey their opinions at managerial levels with no explicit discussions. As a highly essential technique that facilitates employee assertion, active listening skills must be practised within companies as most communication barriers are caused by poor listening methods. Managers must be psychologically committed when listening to subordinates through appropriate body language, eye contact, nods, and responses to enhance employees' confidence. For example, efficient body gestures would generate trust and self-esteem between managers and subordinates. It is deemed challenging to develop and operate optimal whistle-blowing systems in nations with high corruption levels. Organisations worldwide have addressed such complexities with varying degrees of success. The primary barriers and alternatives involving effective whistle-blowing systems include universal access. Organisations encounter multiple intricacies as the most notable system complexity indicates ease of access for whistle-blowers.

The second challenge implies the absence of sound whistleblowing policies. Despite high accessibility, whistleblowing systems need to be well-established and acknowledged within organisations. As such, most organisations employ various information channels (intranet, e-mails, and information cards), compliance and ethics training for recruits to promote whistleblowing. Hence, effective communication results in acceptance or low take-up albeit with cultural reservations towards whistleblowing (World Bank, 2003). Overall, holistic policies should justify current regulations, alleviate whistleblowers' fear, and develop insightful reports for incorporation into company compliance policies with optimal whistleblowing guidelines: type of concerns, specifications, timeframes, and media.

The third whistleblowing complexity concerns report management and resolution. One of the primary reservations towards whistleblowing systems is the significant number of trivial or false reports. Thus, organisations should utilise effective filtering and case management techniques by identifying various forms of investigation and clear guidelines to access the senior management and external bodies. Organisations also struggle to balance whistleblowers' anonymity or confidential reporting with (i) information clarity and (ii) whistleblowers' anticipations for feedback on report outcomes. External companies or providers could operate whistleblowing systems to provide universal access, confidentiality, and anonymity. As multi-national organisations under similar circumstances could encourage reporting with various media in different regions, data-sharing and case comparisons should be performed across the regions in line with data protection policies. Such data should facilitate consistent whistleblowing system evaluations, monitor case resolution timeframes, and identify issue or delay patterns.

3.1 Ramifications of Whistleblowing

Whistleblowing could induce positive and negative implications for companies or societies as follows:

3.1.1 Organisation and Society

According to Khairunnisa and Haniza (2015), whistleblowing could generate both favourable and unfavourable outcomes. The act potentially mitigates unethical corporate activities and prevent people and societies from unforeseen economic and environmental losses. Specifically, whistleblowing managerial misconduct has substantially minimised pollution and environmental damage (Devine & Maassarani, 2011). Many unethical corporate practices were also closed due to whistleblowing. For instance, Ernie Fitzgerald who divulged cost overruns worth billions of dollars at the Pentagon defined whistleblowing as 'committing the truth' given that employers are allegedly honest about misconducts, which are equivalent to criminal activities (Thompson, 2019).

Thus, when it comes to organisational misbehaviour, unethical or inappropriate workplace activity, whistleblowers might present some of the first danger flags. Trust will be cultivated by

creating an open culture that values reporting while maintaining privacy. Unfortunately, there are a few sections in WPA 2010 which in fact contradict with each other, namely section 8 which relates to protection of confidential information and section 14 which discusses the investigations on detrimental actions. This section 14 is very much concerned by whistleblower because despite the fact that section 8 states that it is unlawful to reveal the identity of the whistleblower, such investigations typically result in the whistleblower's identity being made public and at the end it does not only affect the good name of an individual but also the reputation of the said organisation.

3.1.2 Whistleblowers

Whistleblowing may result in various implications, including victimisation that surpasses potential unemployment, civil action, or jail time. Organisational members need to comply with the 'chain of command' rule. For example, the individuals must first discuss whistleblowing concerns with immediate supervisors before conversing with other people. Although whistleblowing often induces positive social outcomes, whistleblowers could encounter adverse implications: ostracism, demotion, unemployment, warnings, blacklisting, workplace complexities, and retaliation.

Whistleblowing has occurred even throughout the rule of Caliph Umar (R.A.). While Caliph Umar (R.A.), was delivering a sermon during a Jumaat prayer wearing two pieces of cloth when everyone else was allotted only one, an attendee questioned the source of the second piece of cloth. Abdullahi (R.A.), Umar's son, then publicly explained that he (Abdullahi) had offered his allotment of the cloth as one proved inadequate for the tall Caliph Umar to cover his aurah.

Tolerance in Islam implies a form of synergy. The Qur'an states as follows:

"..... and forbid (people) from all that is evil and bad and bear with patience whatever befalls you, verily these are some of the important commandments ordered by Allah with no exemption" (Qur'an, 3:110).

"O my son! Offer prayers perfectly, enjoin (people) to all that is good, and forbid (people) from all that is evil and bad and bear with patience whatever befalls you. Verily, these are some of the important commandments ordered by Allah with no exemption" (Qur'an, 31:17).

However, most of the organisations in Malaysia has zero tolerance on any actions that might be considered wrongdoings or dereliction. Impliedly, by implementing WPA 2010 in an organisation, it limits tolerance for corruption and strengthens monitoring agencies in charge of ensuring fair and decent working conditions for all employees.

3.1.3 Ethical Perspective

According to Bouville (2008), whistleblowing could instigate conflicts of interest between people, companies, and communities. Multiple disagreements arise from the perception of whistleblowers as individuals who (i) share mismanagement-oriented information for external benefits or (ii) reflected company disloyalty. Following the former New York Mayor's, namely Rudolf Giuliani, 'broken windows' theory, communities would either report or fix a broken window to rectify even minor misconduct, compare obligations among individuals, and establish a generally conducive circumstance (Harcourt, 2015). The management could guarantee security to employees and corporations as effective whistleblowing within companies requires self-control and accountability. In this vein, whistleblowing could be observed from three ethical viewpoints: public, individual, and organisational.

3.1.4 Public Perception of Ethics and Whistleblowing

According to Gunasekara (2003), despite being a controversial matter, whistleblowing generally catalyses effective corporate governance. As such, the act need not be adversely interpreted as the sole means of conserving corporate or social leaders. In 2022, the United States has enacted the Sarbanes-Oxley Act 2002 (“SOA”) to protect the identity and interest of the whistleblowers. The purpose of the Act is to safeguard investors by enhancing the precision and dependability of business disclosures provided in accordance with American securities regulations. Subsequently most of the countries have started to legislate their own law to protect whistleblowers in later 1990 or early 2000, including Malaysia.

The emphasis on whistleblower protection continues, even after the enactment of SOA. A recent poll commissioned by the Whistleblower Network News (2020) have shown that Americans strongly believe that whistleblowers deserve protection and stronger whistleblower protection laws should be prioritised. The same survey also reported that 44% of respondents will more likely to vote a candidate for Congress who supports the strengthening of whistleblower protection law.

3.1.5 Personal Perception of Ethics and Whistleblowing

Ultimately, whistleblowers experience ambiguity in trusting their employers as the senior management stands to lose the most in bureaucratic organisations. Such contexts could alter the whistleblower’s perspectives of organisational relevance or capacity to induce change, hence compromising their sense of accountability and motivation to report. Nevertheless, whistleblowers should be confident and motivated to perform disclosures of unethical practices with accurate information. Notably, whistleblowers and the media demonstrate a synergetic interaction as both parties share a common ambition (reveal misconduct and organisational or system-oriented changes) albeit with distinct aims.

3.1.6 Corporate Perception of Ethics and Whistleblowing

According to Low et al. (2011), companies that offer a whistleblowing hotline at work should not take its usage and communication lightly as such organisations should not assume that zero whistleblowing report implies no misconduct. Corporations are obliged to address such disclosures to the general public and government agencies or risk negative implications. Likewise, the environmental issues originating from whistleblowing reports must be regarded by relevant bodies. Regardless, some whistleblowing actions could lead to a wrong course of action. For instance, the Republicans in America labelled the Wikileaks informant (Bradley Manning) as a terrorist who breached national security, which caused a public uproar. Notwithstanding, misconduct and corruption that exploit organisational operations are highly unethical. In fact, our WPA 2010 is a short legislation which does not cover too much areas, but we could refer the situation in other jurisdictions which will be discussed later.

3.2 Islamic Perspective of Whistleblowing

Malaysia practices Islamic culture and religion and in fact Islam also encourages to practice whistleblowing. Whistleblowing is one of the primary elements incorporated into Prophet Muhammad’s Islamic political culture to advocate truth, protect community members from harm, and emphasise corporate ethics in companies and government bodies. Islamic teachings embrace ethics parallel to traditional whistleblowing objectives. The following verse is duly elaborated:

“It is not righteousness that ye turn your faces to the East and West, but righteous is he who believeth in Allah and the last day and the angels and the scripture and the prophets, and giveth his wealth for lone of him, to kinsfolk and orphans and the needy and the wayfarer and to those who ask, and to set slaves free and observeth proper worship and payeth the poor-due. And those who keep their treaty when they make one, and the patient in tribulation and adversity and time of stress such are those who are sincere, such are the God-fearing” (Qur’an, 2:177).

The above verse explains the definition of righteousness that should be practised by the people. These characteristics should be instilled in each and every whistleblower so that he does not fear any threat.

The multi-dimensional Islamic ethical value system could also be observed from the famed Hadith of Allah's apostle, whilst He (the Prophet) indicates Islam itself as a set of ethics as follows:

"I was sent to complete the set of ethics" and "the best Jihad is the word of truth against a tyrant ruler" (Abu Dawud, Tirmidhi, Ibn Maja).

Islamic ethical values do not condone egoism under the relativism notion, profit maximisation under the microeconomic approach, and 'the end justifies the means' ideology under universalism. Essentially, Islamic ethics preaches soul refinement and purification following Ghazali where "ethics is the characteristics and moral constitution of the soul" (Ashraf, 1963). The primary Islamic ethics components simultaneously indicate the means of spirit refinement, unity, balance, free will, accountability, and compassion. In Qur'an chapter 68:4, Allah (S.W.T.) described His apostle as follows:

"And verily, for you (O Muhammad) are an on an exalted standard of character" (Qur'an, 68:4).

The aforementioned verse denotes ethics as a standard character. Allah elaborates on dishonesty and misconduct disclosure as follows:

"And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken. And if one of you entrusts another, then let him who is entrusted discharge his trust [faithfully] and let him fear Allah, his Lord. And do not conceal testimony, for whoever conceals it. His heart is indeed sinful, and Allah is knowing of what you do" (Qur'an, 2:283).

Regarding the fundamentals of whistleblowing in Islam, Islamic teachings outline the act as a lawful and religious deed that must be performed by every Muslim. The incorporation of Amru bil Maaruf (enjoining goodness), Wal Nahyi an Al Munkar (forbidding wrongdoing), or Shahada (witness attestation) into evidence-based Islamic law is compulsory for Muslims. Whistleblowing denotes a Muslim's obligation as the act resembles "enjoining goodness and forbidding wrongdoing supported by good witness attestation". As such, the act implies one of the three stages of 'iman' (faith) in line with Abi Saiyidil Khudri (R.A.) as follows:

"I heard the prophet of Allah (P.B.U.H.) saying: He who saw Munkar (wrongdoing) amongst you should prevent it with his hand, if unable to, then with his mouth (whistleblowing), if unable to, then (dislike it) in his heart and that is the least of faith".

The aforementioned verse indicates the significant function of whistleblowing in Islam. Jabir (R.A.) narrated a Hadith from the Holy Prophet (S.A.W.) as follows:

"Discussions are confidential (not subject to disclosure) except in three places: Shedding unlawful blood, Unlawful cohabitation, and Unlawful accumulation of wealth".

Another Hadith narrated from Zaid Bn Khalid. The Prophet (S.A.W.) stated as follows:

"May I tell you who is the best witness? He who testify his witness before asked to do so" (narrated by Abu Dawud).

Following Ibn Taymiya, Allah S.A.W. through His Messenger Rasulullah (PBUH), who promoted righteousness and prohibited misconduct, legalised good (and pure) entities, and forewarned people about something which is not good. The Prophet Muhammad (P.B.U.H.) warned that non-compliant communities would be punished with disasters without exception. The Prophet Muhammad (P.B.U.H.) as narrated by Ibn Mas'ud stated as follows:

“There was never a messenger (from God) who did not have disciples, that is, companions who did not work after him with the Book of God and practice (of the Prophet) until the time after them that some people appeared who mounted the pulpits and spoke fine words, but committed filthy deeds. It is the right and religious obligation incumbent upon every believer to fight against them by hand; if one is not able, then in words; and if one is not able, in his heart, there is no Islam beyond this”.

In another Hadith, The Prophet Muhammad (P.B.U.H.) as narrated by Malik bin Dinar stated as follows:

“Allah Most High sent a revelation to an angel: Overturn such and such a city. (The angel) said: O Lord God, How can I do this when such and such a person who has never committed a sin by even a winking of the eye is in there. (Allah) said: Do it, for he never once frowned at the sins of others”
(Ibn Abbas, Tabrani, Baihaqi).

Internal and external whistleblowing cases are extremely rare with no evidence of whistleblowing systems and protection laws. The following study section aimed to highlight how Islam perceives the four whistleblowing components following al-Ghazali and Ibn Taymiya's treatises on Alhisbah and how the adoption of good corporate governance could be locally valuable.

Overall, Islamic whistleblower law is distinct from Western laws in that it is derived from the principles of Tawhid (the oneness of God) and *Shari'ah* (the fundamental religious concept of Islam—namely, its law). Whistleblowing is a practise in Islam that upholds the public interest (*maslahah 'ammah*), which attempts to achieve the five objectives of *Maqasid Shari'ah* namely life, intellect, faith, lineage and property. The western whistleblowing legislation, on the other hand, was formed in reaction to catastrophes in assuring good governance and defending the public interest, in which the concepts of good and bad are decided by societal norms.

3.2.1 The Guard

Following Al-Ghazali (2002), official mandates are necessary for a high level of guardianship accountability. For example, no official appointment is needed when (i) advising gently and eventually with legal implications against potential misconduct or (ii) exerting physical force to prevent misconduct from occurring. The potential failure of such alternatives should lead to disclosing any unethical practices to relevant bodies by whistleblowing. Based on Ibn Taymiya (1987), such agencies should encompass astute individuals with political and temporal power. Consequently, authority members must reflect specific qualities: (i) knowledge (unethical acts and subsequent consequences) (ii) self-restraint, and (iii) good nature. Ibn Taymiya provided two additional attributes: (iv) gentleness and (v) patience. Essentially, Hisbah and whistleblowing reports must only be acted on for the sake of Allah and public interest without gaining attention or exacting revenge under Shari'ah principles.

3.2.2 The Information

Whistleblowing implies misconduct or 'munkar' (any activities outlawed by Allah and His Messenger), such as criminal offences or 'haraam' behaviour, breach of legal obligations or trust, injustice, and health, safety, or environmental hazards. Notably, Muslims are duty-bound to

safeguard individual interests from harm or ‘mafsadah’ following five fundamental needs under the ‘maqasid al Shariah’ framework: religion, life, intellect, lineage, and wealth. Based on Imam al-Ghazali (d.505H), whistleblowing must reflect four attributes: (i) the act is illegal; (ii) the act is occurring or has unquestionably occurred; (iii) the act is objectively perceived without invading individual privacy; (iv) the act is undoubtedly inappropriate based on objective investigations rather than suspicions or individual judgement.

3.2.3 The Procedure

There are the first four Caliphs in Islamic history, namely Abu Bakr, ‘Umar, Uthman and Ali. Generally, the public could directly assert their concerns to the caliphs or governors in the region. Specifically, the main duties of current governing bodies should correspond to the early days of the caliphs for (i) legal adherence to Qur’anic and Sunnah teachings and (ii) impartial and quick justice across countries in following the path of God. Thus, relevant bodies must strive to reveal the actors catalysing such behaviours, offer adequate counselling, and resolve the perpetrator’s underlying grievances in addressing whistleblowing reports and avoiding severe consequences.

3.2.4 The Protection

“Keep up prayer and enjoin the good and forbid the evil, and bear patiently that which befalls you; surely these acts require courage” (Al-Lukman:17). As the aforementioned verse cautions whistleblowers to expect negative implications, the individuals must persevere and await Allah’s reward as he is the Most Just. Al-Ghazali outlined three retribution forms to facilitate the identification of appropriate responses. First, whistleblowers should perform the disclosure even at the risk of income loss or discrimination (excluding immediate deprivation). Second, whistleblowers do not need to report any misconduct if retaliation implies substantial physical and financial loss that undermines the individuals’ current capacity and situation. Finally, the individuals are not required to divulge unethical practices to governing bodies if the act harms immediate and extended family members. In other words, people should not engage in whistleblowing amidst genuine risk factors involving danger and revenge. Based on al-Ghazali, “to endure (the troubles) with respect to himself is lawful, but not with respect to others”. Likewise, Ibn Taymiya indicated that a positive act is only compulsory when the advantage outweighs adverse implications.

4. Whistleblowing in Other Jurisdictions

After a long discussion and debate, the Parliament of Malaysia has finally passed the Whistleblower Protection Act 2010 on 6th May 2010. Besides encouraging the public to disclose any misconduct and act of corruption, this Act also provides protection for the whistleblowers’ identities and immunity from the civil and criminal actions that the whistleblowers may face after they have provided information to any Enforcement Agency. However, to what extent Whistleblower Protection Act 2010 has played a significant role as the protection for an informant of an improper conduct is not absolute. There are few limitations of the protection of a whistleblower in Malaysia as stated in section 11(1) of the WPA 2010, and in certain circumstances, the enforcement agency is permitted to revoke the protection under WPA 2010. Compared with other jurisdictions, the development of whistleblowing in Malaysia is still slightly far behind as other jurisdictions have developed further.

4.1 Australian Corporations Law 2001

In Australia as earlier as 2004, the whistleblower protection is stated under Part 9.4AAA which is section 1317AA to section 1317AE of the Australian Corporations Law which provides protection for whistleblowers by prohibiting any act of victimisation, giving right to compensation and issue of confidentiality etc. However, prior to the enforcement of ACA, there have in fact been other laws in different states of Australia which have similar effects on whistleblowers, including but not limited to the Public Interest Disclosure Act 1994 (Australian

Capital Territory), the Protected Disclosure Act 1994 (New South Wales), the Whistleblowers Protection Act 1994 (Queensland) and the Whistleblowers Protection Act 1993 (South Australia).

Whistleblower safeguards under Part 9.4AAA of the Corporations Act 2001 were enhanced on July 1, 2019, via Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019, which received Royal Assent on 12 March 2019, to provide additional protections for whistleblowers who disclose misbehaviours against firms and company officers. Among others, the additional protections include the protections of reports made by whistleblowers alleging wrongdoing, an improper condition or circumstance, a violation of financial sector law, and all Commonwealth offences punishable by a sentence of 12 months or more in prison; however, a report made solely about a personal work-related complaint is not covered by the protections. In addition, whistleblowers are given protections from costs orders and easier access to compensation and remedies if they are harmed, unless a court considers the claim to be frivolous or the whistleblower acted unreasonably. Meanwhile, it also mandates all the corporate trustees of registrable superannuation institutions, big proprietary corporations, and public enterprises to have a whistleblower policy starting on 1st January, 2020.

4.2 Public Interest Disclosure Act 1998 United Kingdom ('PIDA')

United Kingdom has passed the PIDA to protect whistleblowers. Section 47B of the PIDA provides that a worker has the right to be immune from harm resulting from any action taken by his employer or from any wilful inaction on his part because the employee has made a protected disclosure (Pyper, 2016; Devi & Dhillon, 2015). The worker can lodge a complaint to the employment tribunal and claim for compensation if the said worker has suffered from detrimental act because of the disclosure made by him.

4.3 Protected Disclosures (Protection of Whistleblowers) Act 2022 of New Zealand

Prior to the enforcement of Protected Disclosures (Protection of Whistleblowers) Act 2022 of New Zealand, New Zealand practiced Protected Disclosures Act 2000 ('PDA'). Unlike PIDA, PDA provides larger protection for whistleblower. A public or private sector employee is protected by the PDA from retaliation for reporting "serious wrongdoing," as described in section 3 of the PDA. Since it also addresses whistleblowing in the public sector, the PDA is a fairly lenient Act. A firm or even governmental agencies could be named in a disclosure of significant wrongdoing. Gunasekara (2003) asserted that "... the New Zealand legislation is also consistent with New Zealand's well-established climate of open government. It also helps to counter a common misconception that privacy is often protected at the expense of the public interest."

In any event, Protected Disclosures Act 2000 has been repealed on 1 July 2022 by section 41 of the Protected Disclosures (Protection of Whistleblowers) Act 2022 (2022 No 20). With no fear of retaliation, the new law makes it simpler for employees to voice concerns about workplace ethics, dangers, financial irregularities, and safety. The Act covers significant wrongdoing in or by any institution, regardless of size, sector, or public or private ownership. The ability of a worker to disclose information without first going through their employer to an appropriate authority or other trustworthy third party at any time is a significant change. This Act also expands the definition of severe wrongdoing to include action that poses a substantial risk to the physical condition and welfare of any individual as well as private sector use of public resources and authority.

4.4 Sarbanes- Oxley Act 2002 of the United States

The passing of the Sarbanes-Oxley Act of 2002 ("SOA") in the United States is one of the most important advances for whistleblower protection. The purpose of the Act is to safeguard investors by enhancing the precision and dependability of business disclosures provided in accordance with American securities regulations.

Although there is SOA in the United States, it is arguably that this SOA may not be perfect either. The case of *Welch v. Cardinal Bankshares Corp* (2004) was the case decided under SOA in the United States. The judge decided that the complainant's dismissal was motivated by his revelation of accounting irregularities. Meanwhile, more than 300 people filed complaints with the Occupational Safety & Health Administration ("OSHA") of the United States Department of Labour in 2004, but according to a report by Wall Street Journal, 56% of those complaints were denied. In 12% of the cases, the complainants withdrew their complaints, while 20% of the cases are still pending. Among these cases, only 12% of the cases did OSHA discover good basis to believe that the complaint was justified (Solomon, 2004).

In *White v Burlington Northern & Santa Fe Railway Co* (2004) retaliatory action was defined as any unfavourable treatment motivated by retaliation and reasonably likely to discourage a charged party or others from engaging in the protected conduct of whistleblowing. In *Collins v. Beaser Homes, USA, Inc.* (2004) it was decided that the plaintiff had the onus of proving that their protected behaviour contributed to the unfavourable action claimed in the complaint.

In the United States, under the Wall Street Reform and Consumer Protection Act 2010⁷, reward system was granted to whistleblowers who managed to provide the information. In order to encourage whistleblowers to come forward to reveal the facts, whistleblowers who meet the requirements will get 10 to 30% of the fines that are collected.

5. Conclusion

In the battle against corruption, whistleblowing has been highlighted as one of the most important tools in a democratic government to ensure good governance, openness, accountability, and stability (Dorasamy & Pillay, 2011). Instead of being restricted, disclosure channels should be increased in order to promote and support whistleblowing. External disclosures to the public, including the media, lawmakers, and civil society organisations, should be included in the disclosure channels in addition to internal disclosures and external disclosures to prescribed entities.

Overall, multiple nations have begun emphasising the essentiality of whistleblowing through pertinent legislation for whistleblower protection and good public and private company governance. Locally, the Whistleblower Protection Act 2010 or WPA 2010 enforced on 15 December 2010 strives to safeguard whistleblowers and mitigate corporate fraud, corruption, and misconduct. Nevertheless, the existing gap between whistleblower protection and optimal corporate governance practices in Malaysia needs to be bridged compared to nations with common and civil laws. For example, WPA 2010 promotes whistleblowing in big-scale corporations to the point of omitting internal whistleblowing from the Act scope.

Perceivably, the Malaysian Parliament could resolve this drawback to ascertain the local WPA 2010 compliance with international standards. For example, effective whistleblower protection potentially catalyses good corporate governance, investor confidence, and consistent flow of investment funds into Malaysia (Low et al., 2011). Islam acknowledges any profession that complies with Islamic teachings and moral conduct to prevent wrongdoings regardless of its origins. In this regard, Islam denotes an inclusive religion with specific categorisations: 'halal' (lawful), 'haram' (unlawful), 'makruh' (disliked), 'mustahab' (recommended), or 'mandub' (optional). Overall, whistleblowing in corporate sectors is a 'halal' and 'wajib' (obligatory) act that induces prudence, openness, and responsibility based on circumstantial factors.

⁷ Also known as the Dodd-Frank Act.

Although leaders, managers, and other authority members should condone whistleblowing, necessary countermeasures must be considered to safeguard whistleblowers and alleviate potential mistreatment. Any disclosed knowledge must be objectively examined before undertaking necessary actions. Following one of the cases during Caliph Umar's (R.A.) reign that involved the Holy Prophet's inebriated companion in Sham (Syria), Umar wrote a portion of the initial part of Suratul Gafir up to "...the forgiver of sin, the acceptor of repentance, the severe in punishment, the Bestower (of favours), None has the right to be worshipped but He, to Him is the final return" (Qur'an 40:1-3). In other words, the first action on post-whistleblowing should involve mild reprehension followed by prompt legal action if the situation affects the general public.

Acknowledgement

The authors would like to thank the Siti Hasmah Digital Library of Multimedia University for access to its online databases.

REFERENCES

- Al-Ghazali (2002). *Al-Ghazali on enjoining good and forbidding wrong (Muhammad Nur A. S, Trans). In Seyyed Hossein N. (Ed.)*. Chicago: Great books of the Islamic world.
- Australian Corporations Law 2001.
- Barnett T. (1992). Why your company should have a whistleblowing policy. *Sam Advanced Management Journal*. 37–42.
- Bernama. (2021, February 5). Judge Hamid Sultan suspended until Aug 27. <https://www.malaysianow.com/news/2021/02/05/judge-hamid-sultan-suspended-until-aug-27>.
- Bouville, M. (2008). Whistle-Blowing and Morality. *Journal of Business Ethics*, 81(3), 579–585.
- Capital Market & Services Act 2007 (Act 671).
- Chartered Institute of Interdevinal Auditors (IIA). (2021). *Position paper: Internal audit and whistleblowing*. https://www.iaa.org.uk/media/522850/Internal_audit_and_whistleblowing.pdf
- Che Abu Bakar, M. & Mohamad Mangsor, M. (2022). It's not enough to speak, but to speak true: Revisiting the whistleblower protection law in Malaysia. *Malaysian Journal of Social Sciences and Humanities*, 7(11), e001949.
- Collins v Beaser Homes, USA, Inc. 2004 WL 2023716 (N.D. Ga. September 2, 2004).
- Companies Act 2016 (Act 777).
- Devi, P. S. & Dhillon, G. (2015). Corporate governance: Should we amend the Whistleblower Protection Act 2010. *Malayan Law Journal*, 6, viii–xix.
- Devine, T. & Maassarani, T. F. (2011). *The corporate whistleblower's survival guide – A handbook for committing the truth*, Berrett-Koehler Publishers, Inc.
- Discovery Surveys Inc. (2023). *Employees are afraid to speak up*. <http://www.discoverysurveys.com/articles/itw-014.html>.
- Dorasamy, N. & Pillay, S. (2011). Whistle blowing: Impediments to effective implementation within the South African public sector. *Corporate ownership and Control*, 8(3), 196–208.
- Financial Services Act 2013 (Act 758).
- Gunasekara, G. (2003). Whistle-Blowing: New Zealand and UK solutions to a common problem. *Stat. LR* 24, 39–55.
- Harcourt, B. E. (2015, April 8). *Shattering broken windows*. <https://www.law.columbia.edu/news/archive/shattering-broken-windows>
- Ibnu Taymiya (1987). *Public duties in Islam, the institution of the hisbah (Mukhtar H., Trans.)*. Khurshid A. (Eds.). United Kingdom: The Islamic Foundation.
- Khairul Azwan Harun v. Mohd Rafizi Ramli [2016] 9 CLJ 858.
- Khairunnisa, A. S. & Haniza, K. (2015, October, 12-13). *Whistle-Blowing as an aspect of amar ma'aruf nahi munkar in institutional governance* [Conference presentation]. International Conference on Aqidah, Dakwah and Syariah 2015. Kuala Lumpur.
- Low, L. T., Law, K. A. & Ong, S. F. (2011). Corporate governance assessment in company board structure. *African Journal of Business Management*, 5(4), 1175–1183.
- MACC. (2022). *Statistic of arrest on corruption cases*. https://www.sprm.gov.my/index.php?page_id=97&language=en.
- MACC. (2023). *Statistic of arrest on corruption cases*. <https://www.sprm.gov.my/en/enforcement/statistics-on-arrests>.
- Malaysian Anti-Corruption Commission Act 2009 (Act 694).
- O'Dell, L. (n,d). Nuclear Power. In Everett, D. (Ed.) *The Encyclopaedia of Oklahoma History and Culture*. Oklahoma Historical Society. <https://www.okhistory.org/publications/enc/entry?entry=NU001>.

- Pascoe, J., & Rachagan, S. (2005). Key developments in corporate law reform in Malaysia. *Singapore Journal of Legal Studies, 1*, 93–113.
- Protected Disclosures (Protection of Whistleblowers) Act 2022 of New Zealand.
- Public Interest Disclosure Act 1998 United Kingdom (PIDA).
- Pyper, D. (2016). Whistle-blowing and gagging clauses, Briefing Paper No. CBP 7442. London, House of Commons Library.
- Rafizi Ramli v. Public Prosecutor (2014) 3 MLJ 114.
- Rokiah Mohd Noor v. Menteri Perdagangan Dalam Negeri, Koperasi & Kepenggunaan Malaysia & Ors and Another Appeal [2016] 8 CLJ 635.
- Sarbanes- Oxley Act 2002 of United States.
- Securities Commission Malaysian Act 1993 (Act 498).
- Solomon, D. (2004). For financial whistle-blowers, new shield is an imperfect one. *Wall Street Journal*.
<https://www.wsj.com/articles/SB109684145991934717>
- The Guardian. (2013). Edward Snowden: The whistleblower behind the NSA surveillance revelations.
<https://www.theguardian.com/world/2013/jun/09/edward-snowden-nsa-whistleblower-surveillance>
- The Star (2017, January 4). *Former CEO seeks protection*.
<https://www.thestar.com.my/news/nation/2017/01/04/former-ceo-seeks-protection-my-client-qualifies-as-a-whistleblower-lawyer-tells-court/>.
- Thompson M. (2019, February 5). A tribute to Pentagon whistleblower Ernie Fitzgerald.
<https://www.pogo.org/analysis/2019/02/remembering-ernie-fitzgerald>.
- Transparency International Malaysia. (2022). Corruption perception index: Malaysia continues to deteriorate.
<https://www.transparency.org.my/pages/news-and-events/press-releases/corruption-perception-index-malaysia-continues-to-deteriorate>
- Watchman, G. R. (2004). *Sarbanes-Oxley Whistle-blowers: A New Corporate Warning System*. GAP's Website.
<http://www.whistleblower.org/doc/GAP%20Analysis%20Sarbanes%2DOxley%2Epdf>.
- Welch v Cardinal Bankshares Corp Fed. App. 0101P (6th Cir. April 14, 2004).
- Whistleblower Network News (2020). Whistleblower Network News Survey.
<https://whistleblowersblog.org/whistleblower-news-network-survey/>
- Whistleblowers Protection Act 2010 (Act 711).
- Witness Protection Act 2009 (Act 696).
- World Bank (2003). *Peter Griffiths. The World Bank and the whistleblower*.
<https://www.theguardian.com/business/2003/aug/31/wto.westafrica>
- Zarina, A. (2003, September, 29). Whistle-blowing: Subversive Spy or Responsible Corporate Citizen? *Regional Conference on Agenda for the 21st Century – Revitalising the Corporation, JW Marriot Hotel, Kuala Lumpur*.