Vol 3 No 2 (2023) eISSN: 2785-9266

ISSUES AND PERSPECTIVES IN BUSINESS AND SOCIAL SCIENCES

MMU MULTIMEDIA UNIVERSITY | PRESS

ISSUES AND PERSPECTIVES IN BUSINESS AND SOCIAL SCIENCES

VOLUME 3 · ISSUE 2 · JULY 2023

www.journals.mmupress.com/ipbss

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Issues and Perspectives in Business and Social Sciences

Embracing corporate governance and whistleblowing in Malaysia: A conceptual review

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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 2016[3],

[1] Act 498.
[2] Act 671.
[3] Act 777.

Issues and Perspectives in Business and Social Sciences (2023) Issue 2:23–37.
doi: https://doi.org/10.33093/ipbss.2023.3.2.1

URL: https://journals.mmupress.com/index.php/ipbss

Witness Protection Act 2009[4] and Malaysian Anti-Corruption Commission Act 2009.[5] The question that arises is to what extend 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 investigates 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 confident, 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 disclosure 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 1972[6] 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 induvial 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 Saiydil 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 2010[7] , 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 accepter 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.

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Issues and Perspectives in Business and Social Sciences

What motivated Malaysians in banking with the service provider in the post COVID-19 pandemic era?

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Abstract

The fierce competitive environment in Malaysian banking industry has pressured the service providers into focusing on the improvement of their customers loyalty.This study aims to examine the antecedents of customer satisfaction to promote customer loyalty. This study adapted SERVQUAL model to explain the influencing factors. Hundred and one valid and reliable responses were used for data analysis. The findings suggested positive relationships between tangibility, assurance, and empathy on customer satisfaction. The relationship between customer satisfaction and customer loyalty is significantly positive. Contrary to previous findings, responsiveness and reliability are not significant in explaining customer satisfaction. This study is one of the very few studies in Malaysia and Asia to propose effective measures to enhance customer satisfaction and loyalty post COVID-19 pandemic era.

Keywords:
SERVQUAL model;
Customer satisfaction;
Customer loyalty;
Bank services;
Customer survey.

Received May, 2023
Accepted Jun, 2023
Published Jul, 2023

1. Introduction

Two factors have changed the Malaysian banking landscape. The first factor is a shift in consumers' banking habits and preferences. The Malaysian Central Bank has reported continuous increase of online banking rates, from 107.4% in 2020 to 117.5% in 2021, and the mobile banking population has grown more than 60% in 2021 (Starpicks, 2021). The growth of online banking and advancement in the mobile technology may have pushed the growth in online and mobile banking among banks' customers. The popularity of online banking could also be due to the movement control order implemented during the COVID-19 pandemic, where banking customers were forced to handle their finances without visiting the banks physically. Such growth also demands superior services. The involvement in the digital technology and service advancement have become more and more important (Osman et al., 2015). There is also a rising need for banks to differentiate the financial products offered to individuals and companies, especially during hard times of economic turbulence (Wu & Olson, 2020).

The second factor is competition in the banking sector due to the liberalisation of Malaysia's banking sector that has successfully attracted new foreign commercial banks, which have introduced more choices of banking products and services to the market and thus drastically increases customers bargaining power (Leninkumar, 2016). Commercial banks with traditional

Issues and Perspectives in Business and Social Sciences (2023) Issue 2:38 – 47.
doi: https://doi.org/10.33093/ipbss.2023.3.2.2

URL: https://journals.mmupress.com/index.php/ipbss

business models will be left behind from the industry due to their failures to flexibly adapt to the changing demand of customers (Sharma, 2016). The rapid entry of foreign commercial banks in the market has negatively affected the profitability of local commercial banks (San et al., 2011). Currently there are 18 foreign commercial banks in Malaysia, competing against 8 local commercial banks and the growth of foreign commercial banks is rapid, with the occupancy rate of more than 25% of the national market size (Bank Negara Malaysia, 2020). Intense competition in the Malaysian banking industry has made it mandatory for commercial banks to improve the service quality to optimise profits and create wealth (Tweneboah-Koduah & Farley, 2016).

Due to the change of customers' banking habits and preferences, as well as fierce competition from foreign commercial banks, local commercial banks are forced to improve their service quality to retain their current customers and attract new ones. The significance of service quality in the banking sector has motivated the Malaysian Central Bank to introduce the Financial Sector Talent Enrichment Program to train qualified personnels in financial institutions to enhance the service quality and eventually satisfy the customers (Kheng at al., 2010). This study is therefore conducted to examine the competitive advantage among the local commercial banks in the post COVID-19 pandemic era by examining (i) the relationship between customer loyalty and customer satisfaction and (ii) the antecedents of customer satisfaction. According to Hamzah and Shamsudin (2020), customers' feeling of contentment and confidence, can evolve through enhancing the antecedents of customer satisfaction.

According to Leninkumar (2016), commercial banks are focussed on retaining the existing customers rather than attracting new potential customers. This further indicates customer satisfaction and loyalty to sustain the banking business shall continue as the highlight of the local commercial banks. Moreover, acquiring new customers comes with higher costs than preserving the existing customers (Islam et al., 2020). As a 5% raise in retention of customers will result in 25% to 100% increase in the profits of the service providers, it is crucial for researchers to determine the factors which are the most significant in improving the loyalty of their customers (Sayani, 2015). It is believed that there are more efforts that need to be done by the local commercial banks to retain customer loyalty and customer satisfaction. This study is one of the very few studies in Malaysia and Asia to propose effective measures to enhance customer satisfaction and loyalty in the post COVID-19 pandemic era. This paper starts with a literature review, followed by research methodology, findings, discussion, and conclusion.

2. Customer Loyalty

Customer loyalty is defined as the faith in banking services which customers enjoy over time. It largely relied on the quality of services offered and feeling of satisfaction provided by the service providers (Kibret & Dinber, 2016). Customer loyalty is achieved when customers are not willing to switch to other commercial banks even if the competitors have attractive marketing campaigns. Loyalty brings a positive impact to the companies' profitability. It helps commercial banks to earn competitive edge in the marketplace (Tweneboah-Koduah & Farley, 2016).

Customer loyalty can be viewed from two perspectives which are behavioural and attitudinal. From a behavioural perspective, it is the act of repeated patronage to a particular provider (Leninkumar, 2016). Whereas attitudinal perspective depicts the customer's devotion or support to a commercial bank that leads to repeated consumption of services regardless of the nature of services (Tweneboah-Koduah & Farley, 2016). Loyal customers will influence their peers to get the same experience from the same provider (Leninkumar, 2016). A loyal customer is less likely to purchase competitor's products for the reason of price and/or promotion. Instead, a loyal customer is more likely to recommend and bring in new customer via positive word-of-mouth, which has appeared to be an effective way of retaining banking customers (Yoo & Bai, 2013).

3. Customer Satisfaction

According to Rahman et al. (2020), customer satisfaction is the most considerable element in banking industry to preserve customer loyalty and financial gain in the long term. Customer satisfaction is a positive feeling after the usage of financial goods or services which appears to be consistent with their expectations (Tweneboah-Koduah & Farley, 2016). Customer satisfaction is judged by comparing pre-purchase and post-purchase expectations (Oliver, 1999), and in the banking sector, it could be measured based on customers experiences when acquiring financial goods and services. Customer satisfaction leads to repeated purchase of the same goods or services (Kibret & Dinber, 2016). Customer satisfaction is therefore vital towards improving commercial banks' business performance (Otto at al., 2020). Positive pre- and post-purchase confirmation will lead to growth and survival. Thus, it is important for banking service providers to build close relationships with their existing customers to better understand their needs and preferences as well as introduce innovative products to improve customer satisfaction (Gazi et al., 2021). On the other hand, negative disconfirmation results in dissatisfaction that will jeopardise commercial banks' survival (Sayani, 2015) due to the loss of existing customers (Fida et al., 2020). Customer satisfaction could not be achieved when the bank service provider failed to suffice the needs and expectancy from customers.

4. Research Framework

SERVQUAL is a model proposed by Parasuraman et al. (1985), which focuses on commercial banks to evaluate the quality of service from the discrepancy between customer expectation and the real service received (Tan & Marimuthu, 2014). SERVQUAL service quality's concept has been customised into five specific dimensions that measures commercial bank's service quality, namely: tangibility, responsiveness, reliability, assurance, and empathy (Kibret & Dinber, 2016; Parasuraman et al., 1985). SERVQUAL model has been extensively used as a tool to gauge the service quality in service industry, however limited studies have been conducted in Asia and Malaysia to measure the change in customer loyalty post COVID-19 pandemic era. The measurement of service quality in the banking sector has been done for the purpose of assessing customer satisfaction and loyalty (Kibret & Dinber, 2016). The model has been instrumental in evaluating service quality that are crucial to an organisation to gain their sales revenue and profits from the services delivered (Rafikul et al., 2015).

The research framework for this study is presented in Figure 1. The antecedents of customer satisfaction, namely tangibility, responsiveness, reliability, assurance, and empathy were hypothesised to have a positive relationship on customer satisfaction and customer satisfaction was theorised to be positively related to customer loyalty.

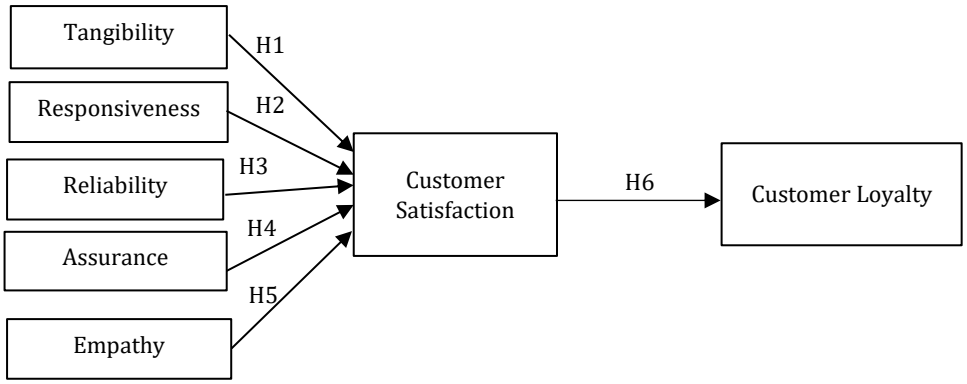

Figure 1: Research Framework

The following subsections explain the relationship between the elements of SERVQUAL and customer satisfaction and eventually hypothesise the relationship between customer satisfaction and customer loyalty.

4.1 Tangibility

Tangibility refers to the evaluation of all physical objects that can be seen and touched (Vinot et al 2016). These physical objects which are used by business entities to perform services for the customers are considered as an extremely important service quality for the customers (Auka et al., 2013) and are evaluated based on their usefulness and quality (Khan & Fasih, 2014). For a commercial bank, tangibility includes an evaluation of its external appearance or indoor design, equipment, the number of staff to service its customers and other banking facilities (Lau et al., 2013).

Tan et al. (2016), Sugiarto and Octaviana (2021) and Abdul et al. (2021) have found positive, significant relationship between tangibility and customer satisfaction. The available physical objects create an impression towards the bank and affects customer satisfaction as these objects become the focus of customers when they physically visit the bank (Abdul et al., 2021). Hence, the following hypothesis was formed:

H1: There is a positive relationship between tangibility and customer satisfaction.

4.2 Responsiveness

Responsiveness refers to the capacity of commercial banks to react and assist customers as well as provide immediate service, such as quick response to customer enquiries and immediate provision of proof of transaction (Fida et al., 2020). Responsiveness also includes timely and efficiency in answering and solving customer requests, problems, and complaints, readiness of a bank personnel to help in a means of delight and effectiveness (Mamo, 2015). According to Anjalika and Priyanath (2018), customers expect the banks to provide them services within a short waiting time and with great staff enthusiasm. The positive relationship between responsiveness and customer satisfaction is documented in Sugiarto and Octaviana (2021), Tan and Marimuthu (2014), and Vasumathi and Subashini (2015). The relevant hypothesis is formed as:

H2: There is a positive relationship between responsiveness and customer satisfaction.

4.3 Reliability

Reliability is defined as the ability of commercial banks to provide service dependably and precisely (Fida et al., 2020). Commercial banks with high reliability provide their products and services correctly at the shortest time in accordance with its promises (Cudjoe et al., 2015). The customers prefer reliable banks that deliver promises at the right time (Khan & Fasih, 2014). Keeping customer records accurately is also one aspects of reliability that is able to enhance customer satisfaction (Tesfaye, 2015). Reliability has been found to be highly correlated with customer satisfaction (Melaku, 2015). According to Cudjoe et al. (2015), reliability is a significant element to bring customer satisfaction in commercial banks amidst increasing complaints from customers in developing countries. Hence, the hypothesis below was developed:

H3: There is a positive relationship between reliability and customer satisfaction.

4.4 Assurance

Assurance represents the intellectual, courtesy and ability of employees to instil trust and faith in commercial banks (Fida et al., 2020). Assurance reflects employees' friendliness, knowledge, experience, and attitude in responding to customers' queries and issues. Assurance measures the innermost comfortable feeling of the customers towards the service provided by the bank officers

(Sugiarto and Octaviana, 2021). It refers to the degree to which customers think that the commercial banks can grant the services that result in the client's faith and expectation (Minta & Stephen, 2017). Past studies have found that assurance and customer satisfaction is positively related (Quyet et al., 2015; Kant & Jaiswal, 2017). Hence, the following hypothesis was developed:

H4: There is a positive relationship between assurance and customer satisfaction.

4.5 Empathy

The definition of empathy in the service context refers to the ability of staff and personnel to understand and respond to the perception and emotion of customers (Iglesias et al., 2019), which includes how staff in commercial banks display concern and pay attention to their customers (Sugiarto and Octaviana, 2021). The empathy dimension includes attentiveness and integrity within the service setting (Pakurar et al., 2019).

Tan et al. (2016) found positive relationship between empathy and customer satisfaction. Customers usually seek for high rate of interaction with bank staff and customised services, which are expected to help the customers meet their needs and wants. Banks that prioritise their customers by being emphatic elicit feelings of uniqueness and appreciation among the customers. Empathy establishes spiritual relations among customers, which result in improving the performance of banks and creating a stronger customer base (Pakurar et al., 2019). The relevant hypothesis was stated as follows:

H5: There is a positive relationship between empathy and customer satisfaction.

4.6 Customer Satisfaction

Customer satisfaction is the most common variable when studying the impact of customer loyalty attribute from service quality (Du & Tang, 2014). Customers compare different commercial banks in terms of service quality, and they switch from a bank to another to enjoy the best banking experience (Moghavvemi et al., 2018). They are more likely to be loyal when they are satisfied with the service provided (Hamzah et al., 2017). More satisfied customers lead to higher retention rate (Al-Slehat, 2021). Success of a commercial bank depends on the ability to give what customers desire or even beyond their expectation. Customer satisfaction plays an important role in achieving customer loyalty in commercial banks (Kibret & Dinber, 2016; Tweneboah-Koduah & Farley, 2016; Islam et al., 2020). The relationship between customer satisfaction and customer loyalty has been found to be positive (Sayani, 2015). Based on the literature, the following hypothesis was formed:

H6: There is a positive relationship between customer satisfaction and customer loyalty.

5. Research Method

A research questionnaire was developed as the main research instrument. The questionnaire elicited bank customers' evaluations of the five elements of SEVQUAL, their satisfaction and loyalty towards the bank that they primarily transacted with during the data collection period.

A filter question was added to the questionnaire to ensure that the respondents have at least one year experience in using banking services of any commercial banks. Using a purposive sampling method, two hundred questionnaires were distributed to the target respondents, out of which 101 valid responses were obtained and used in the data analysis. The sample size was considered as valid according to the rule of thumb 10:1 (Hair et al., 2010), whereby the sample size should be at least ten times the number of independent variables available in the framework. This study has a total of five SERVQUAL dimensions as independent variables, thus, the minimum

requirement on sample size would be 50. The valid responses were then analysed using Statistical Software Package for Social Science (SPSS) version 23.

Table 1 tabulates the demographic profile of the respondents. There are 53 male respondents (52.48%) and 48 female respondents (47.52%). Most of the respondents are aged 30 and below (68.32%), followed by those aged between 31 to (18.81%), 7 respondents (6.93%) aged between 41 – 50 and only 6 respondents (5.94%) aged between 51 and above. In terms of ethnic groups, most of them are Chinese 37 (36.63%), followed by Malay 28 (27.73%), Indian 25 (24.75%) and other races 11 (10.89%).

Table 1: Demographic profile

Variable	Category	Frequency	Percentage
Gender	Male	53	52.48
	Female	48	47.52
	Total	**101**	**100.00**
Age	30 and below	69	68.32
	31 – 40	19	18.81
	41 – 50	7	6.93
	51 and above	6	5.94
	Total	**101**	**100.00**
Race	Malay	28	27.73
	Chinese	37	36.63
	Indian	25	24.75
	Other	11	10.89
	Total	**101**	**100.00**

6. Results

The descriptive analysis is presented in Table 2. The analysis generated mean score and standard deviation of the independent variables (tangibility, responsiveness, reliability, assurance and empathy and the dependent variables (customer satisfaction and loyalty) on the service quality of local commercial banks in Malaysia. This study used the mean to identify the central tendency or the average for the data set. Based on the result, the mean for the variables ranged from 3.7406 to 3.8535. Assurance showed the highest mean score of 3.8535 while responsiveness showed the lowest mean of 3.7406. Second highest mean was customer satisfaction followed by customer loyalty, tangibility, reliability, and empathy with the mean of 3.8059, 3.7762, 3.7683, 3.7644, 3.7545 respectively. The standard deviation was used to describe the variability of the data set to its mean, which ranged from 0.74444 to 0.78805. Since the standard deviation is not higher than the corresponding mean value, the variability is deemed as not over spread out and is within the acceptable range.

Table 2: Descriptive Analysis

Variable	N	Standard deviation	Variable mean
Tangibility	101	.74444	3.7683
Responsiveness	101	.76448	3.7406
Reliability	101	.76806	3.7644
Assurance	101	.77557	3.8535
Empathy	101	.75941	3.7545
Customer Satisfaction	101	.78662	3.8059
Customer Loyalty	101	.78805	3.7762

6.1 Multiple Linear Regression

The hypothesised relationships were analysed using multiple linear regression analysis. The influence of the five SERVQUAL dimensions were first tested against customer satisfaction as the dependent variable. A second regression analysis was performed to the relationship between customer satisfaction and customer loyalty. Both regressions are significant with R^2 = 0.872 and 0.775 respectively. The *F*-statistics are 129.791 and 341.127, respectively.

The results, as shown in Table 3, indicate that tangibility, assurance, and empathy positively influence customer satisfaction. Tangibility (β=0.312, t=0.612), Assurance (β=0.341, t=4.132), Empathy (β=0.225, t=2,633) were found to be significant, showing support for H1, H4, and H5. The relationship between customer satisfaction and customer loyalty were also found to be significant (β=0.880, t=18.470) and thus H6 were supported. The results showed that two of the SERVQUAL dimensions were not significant in relation to customer satisfaction, namely Responsiveness (β=0.061, t=0.612) and Reliability (β=0.052, t=0.523). Thus, H2 and H3 were not supported.

Table 3: Summary of Results

Hypotheses	Relationship	β	t-value	Findings
H1	Tangibility → Customer Satisfaction	0.312***	3.493	Supported
H2	Responsiveness → Customer Satisfaction	0.061	0.612	Not Supported
H3	Reliability → Customer Satisfaction	0.052	0.523	Not Supported
H4	Assurance → Customer Satisfaction	0.341***	4.132	Supported
H5	Empathy → Customer Satisfaction	0.225***	2.633	Supported
H6	Customer Satisfaction → Customer Loyalty	0.880***	18.470	Supported

Note: *** p-value < 0.01

7. Discussion and Conclusion

Findings of this study show that H1, H4 and H5 are supported. Tangibility, assurance, and empathy are found to positively affect customer satisfaction of commercial banks post COVID-19 pandemic era. Among the significant antecedents, assurance appeared to have the largest positive impact on customer satisfaction (β= 0.341). This accentuates that customers need assurance on the security of the banking transactions, especially when their online and mobile banking activities increase. Therefore, commercial banks should focus on promoting the banks' safety and security measures to their customers.

Results also show that customers continue to appreciate the physical appearance of the banks even though they are more likely to conduct their banking affairs online, in the comfort of their own homes. It is therefore imperative that banks retain their physical appearance and provide top notch tangible services to their customers. Adoption of high-end facilities could further enhance customers' evaluation of tangibility.

The lowest impact on customer satisfaction was found to be empathy. This could be due to the advanced online banking systems that fulfil much of the customer needs and minimise physical interactions with banking personnel. Moreover, as customers' banking habits have shifted to the online mode, physical interactions with banking personnel become even lesser.

The influence of customer satisfaction on customer loyalty was found to be positive and strongly significant (β=0.880). This result emphasises the importance of ensuring customer loyalty by ensuring customer satisfaction. The increase of online and mobile banking indicates that commercial banks need to provide satisfactory online services to the customers. Budgetary focus should be towards enhancing online services as much as the tangible objects.

This study has found that responsiveness and reliability are not significant in relation to customer satisfaction, which challenge the findings in past literatures. This finding could be attributed to the sample's composition which comprises the younger bank customers (68% of the respondents were below 30 years old). It is possible that the younger bank customers consume lesser banking products and services and therefore face less complicated issues, thus, seldom need assistance from bank personnel. Moreover, the young generation are usually more technologically savvy and are therefore expected to be able to solve most issues or queries that they have by relying on online resources rather than the bank's personnel. However, this finding could also be valid considering the adoption of advanced technology in the banking sector which renders quick and effective responses to customers' needs, without much of human intervention. This notion, of course, requires further studies.

This study is important to the bank industry as it is one of the very few studies in Malaysia and Asia to examine customer satisfaction and loyalty post COVID-19 pandemic era. The findings suggest that banks should focus on security implementation that could enhance the customers' trust. In other words, the banks' security system remains the major concern of the banking customers. Therefore, it is suggested that the local commercial banks place more funds to enhance their security system to ensure the safety of customers' fund as well as data protection. Finally, it is also recommended that the bank management team focus on the training and development that emphasised not only product knowledge but also empathy.

8. Limitation and Future Studies

Findings of this study should be interpreted with care as there could be a bias in the results because the respondents were mainly young (below 30 years old). The significance of responsiveness and reliability should be further probed by expanding the sample size and ensuring more representative groups of banking customers.

Acknowledgement

The authors acknowledge the helpful suggestions from the reviewers and editors in improving this paper.

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Issues and Perspectives in Business and Social Sciences

An economic analysis of anti-profiteering law in Malaysia

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Abstract

In Malaysia, the Price Control and Anti-Profiteering Act 2011 contains both price control and anti-profiteering provisions. A profiteering offence is committed when a seller makes an 'unreasonably high profit' which is further defined as exceeding a mark-up percentage or margin percentage from a baseline profit on the first day of the financial year or calendar year of business. Neoclassical microeconomic theory teaches that regulatory control over prices is inefficient and harms consumers more than does any good. Violations of the anti-profiteering provision are challenging to detect as prices may increase due to increased costs. Contrary to the rationale for anti-gouging laws, allowing businesses to increase prices due to a shortage of supply may save consumers from unnecessary searches for the illusive low-price controlled products and further incentivise sellers to seek alternative sources of supply. In a competitive market, market discipline by consumers is sufficient to deter businesses from raising prices beyond competitive market prices. Competition law and mandatory price marking law should be used to address uncompetitive market conditions. Perhaps, for these reasons, there are no more new reported cases of enforcement of the anti-profiteering law in the news since 2016 despite having a reported appeal decision in 2020.

Keywords:
Anti-profiteering law;
Malaysia;
Price control;
Microeconomics theory.

Received June, 2023
Accepted July, 2023
Published July, 2023

6. Introduction

A competitive market is essential to ensure efficiency in producing and allocating goods. It also ensures broader and better choices of goods and services to consumers and ultimately allows the government to generate tax revenue from the market. An efficient economy produces more commodities with the same or lesser resources. An increase in business productivity brings in higher profit and better investment opportunities; while an increase in productivity among workers translates into higher wages and better working conditions. As for the government, high productivity results in higher tax revenue and, thus, better social welfare support and services.

It must be noted that the capitalist system, coupled with people's profit-maximising nature, may, in theory, lead to market failures in the form of deadweight loss when resource allocation is inefficient as prices increase above marginal cost. The term 'profiteering' is used to connote the sense that the price is excessive and sometimes made in an unethical method. What amounts to profiteering depends on the law of the jurisdiction. However, the essence of 'profiteering' remains that it involves taking in an unreasonably high profit. A person may be accused of profiteering when they raise prices unreasonably and unnecessarily to increase their net profit. Frequent

Issues and Perspectives in Business and Social Sciences (2023) Issue 2:48–59.
doi: https://doi.org/10.33093/ipbss.2023.3.2.3.

URL: https://journals.mmupress.com/index.php/ipbss

occurrences of profiteering in history happen during times of emergencies, e.g., wars, healthy emergencies, and natural disasters (Suranovic, 2015).

The objective of this article is to perform, using microeconomics theory, an economic analysis of the anti-profiteering law in Malaysia. Therefore, the research methodology is economic analysis of law. Pacces and Visscher (2011) call this approach 'normative law and economics', whereby "law is analysed from an economic perspective … [and] policy recommendations are derived on the basis of economic analysis."

7. Anti-profiteering laws around the world

Throughout history, countries have implemented or attempted to implement price control and anti-profiteering measures. Most of these efforts were short-lived, with some attaining the purpose of the said legislation but mostly failing to do so. The rationale for the legislation varies depending on the circumstances and landscape of the country. Five historical instances of anti-profiteering laws are examined here: Greece (1914–1925), Japan (1938–1939), Iran (1975–1977), Australia (1999–2002) and the United States of America. These are countries which, through our research, have in the past or presently enacted some form of anti-profiteering law.

2.1 Greece (1914–1925)

Between 1912 and 1922, Greece was involved in three wars: the Balkan Wars (1912–1913), World War I (1917–1918), and Greco-Turkish War (1919–1922). The wars led Greece into significant economic turbulence and caused high inflation due to a disruption of international commerce and a shortage of goods. The Greek government also failed to collect new taxes or take out loans to fund the war (Mazower, 1991). Inflation caused the price of goods to skyrocket and real wages to be depressed, reducing the standard of living of the masses (Potamianos, 2015). In response, the Greek government introduced price control ('valorisation') towards essential goods such as bread, meat, fish, and rental.

Legislation against 'shameful profits' too was enacted. It imposed heavy penalties against merchants trading at prices above the fixed price or at prices which 'lead to too much profit'. What amounts to 'shameful profit' was decided by the 'profiteering courts' after examining the market's specific circumstances. The profiteering courts had the jurisdiction to impose high fines, imprisonment of up to five years, shutting down the business and even a six-month exile from the nation. This mobilisation against profiteering remained common in Greece until 1925 (Berger & Przyrembel, 2019).

2.2 Japan (1938–1939)

In 1917, the price of rice in Japan rose to a point where it was higher than the wages earned by ordinary people. This price hike led to hardships and brought about 'rice riots' in the country. To combat this, the Japanese government introduced an Anti-Profiteering Ordinance in September 1917 to prevent the rise in the price of foodstuffs, particularly rice. The initiative was ineffective in preventing rice speculation as the fine for contravention was only 100 yen, although that was a substantial sum in 1917. It was inadequate to prevent rice speculators from following their usual practices (Ladejinsky, 1936).

Later in July 1937, the Marco Polo Bridge incident catapulted Japan into a war with China. With the drop in gold prices during that period, inflation occurred, and the economy of Japan suffered a severe decline (Hara, 2003). Thus, in August 1937, the Anti-Profiteering Ordinance 1917 was

revived to control the rising prices. Ultimately, the government learned that control measures had little noticeable effect on prices (Odell, 1940).

2.3 Iran (1975–1977)

In July 1975, the Iranian government unleashed an aggressive price control campaign alongside its anti-corruption campaign against the bazaar. When bazaar traders were found to have sold goods above the government's recommended price, they were fined, imprisoned, and forced to close shop. This attempt, however, was unsuccessful in stemming inflationary forces significantly (Mazaheri, 2006). Instead, the Shah government's aggressive enforcement antagonised many wealthy and socially powerful groups of businessmen, and the government's inability to properly manage the economic problems sparked an uprising among Iran's bazaar communities which ultimately led to the downfall of the Shah Mohammad Reza Pahlavi regime (Mazaheri, 2006).

2.4 Australia (1999–2002)

The Australian government had a better experience in enforcing an anti-profiteering law. In mid-1999, the government amended the existing Trade Practices Act 1974 to include provisions against price exploitation practices in preparation for introducing goods and services tax (GST) on 1 July 2000 (Sweeney, 2000). The anti-profiteering measures were enforced from July 1999 to June 2002. The statute conferred various enforcement powers to the Australian Competition and Consumer Commission, among which is the responsibility to formulate guidelines on what amounts to price exploitation and to seek penalties before the Federal Court for breach of the price exploitation law. The law allowed the Commission to issue price exploitation notices and penalise companies up to $10 million and individuals up to $500,000 if found to be charging 'unreasonably high prices', as provided in Section 75 of the Act. The Australian authorities executed the provision well and attained its primary goal of protecting consumers against improper price increases incidental to the introduction of GST. As per its sunset clause, the provisions relating to anti-profiteering practices expired in 2002.

2.5 United States of America

Today, most states in the United States of America have some form of anti-price gouging law. These operate during emergencies, such as natural disasters, to prevent retailers from charging excessive prices when demand increases but supply remains limited. Most academic commentators are not in favour anti-price gouging laws as they are said to distort the market and hamper the incentive to rush new supplies to areas of need (Bae, 2009; Beatty et al., 2020; Bourne, 2021; Carden, 2010; Chakraborti & Roberts, 2020, 2021, 2023; Gaziano, 2006; Giberson, 2011; Montgomery et al., 2007; Oladosu, 2022; Rapp, 2006).

8. Anti-profiteering law in Malaysia

Since at least 1946, the British Malayan colonial government implemented and enforced some form of price control on consumer goods in Malaya. In post-World War II Malaya, prices of goods were excessively inflationary due to the post-war reconstruction efforts, which increased demand even when the shortage caused by the war had yet to be alleviated (Drabble, 2000). To stem the tide of inflation, the British administration suppressed workers' wages. Unfortunately, wage suppression, supply shortage, the rising cost of living and political discontent led to social unrest across the nation. Thus, a new approach to control inflation in the form of a Price Control Ordinance of 1946 was introduced. This statute allowed the government to impose a price ceiling on selected goods and services and penalise those who failed to comply with the ordinance. When

Malaya gained independence in 1957, the Price Control Ordinance (later renamed Price Control Act 1946) survived and has been amended numerous times.

In 2010, the Malaysian legislature passed and gazetted the Price Control and Anti-Profiteering Act 2011 to repeal and replace the Price Control Act 1946. This change happened in anticipation of a potential price hike brought about by the introduction of Goods and Services Tax (GST), which was initially scheduled to be implemented in 2011 but was delayed until 2015. The new Malaysian Act is a piece of two-in-one legislation incorporating both price control and anti-profiteering laws. The experiment of implementing GST in Malaysia lived a short life. Due to widespread opposition from the public, GST was reverted to a Sales and Services Tax in 2018.

When the Price Control and Anti-Profiteering Bill was introduced, the then Deputy Minister of Domestic Trade and Consumer Affairs explained the *raison d'être* of the Act. The old Price Control Act was difficult to use as the government had to gazette the prices of each item that was to be regulated. An anti-profiteering provision instead can be used to prohibit unreasonable increases in prices. The Australian Trade Practices Act 1974 inspired the Malaysian anti-profiteering provisions. Like Australian law, a sunset clause for the anti-profiteering provision was initially proposed, but this was extended indefinitely in 2017.

Since 2011, the Price Control and Anti-Profiteering Act has undergone several rounds of amendment. When it was first passed, the Act and its regulations only applied to household goods and necessities. In 2018, its scope was expanded to all goods and services sold and offered for sale in Malaysia.

Under the Act, an offence is committed when a person, "in the course of trade or business, profiteers in selling or offering to sell or supplying or offering to supply any goods or services" (section 14(1)). The term 'profiteer' is defined as 'making a profit unreasonably high' (section 14(2)). The penalty for profiteering is, for a corporation, a fine of not exceeding RM500,000 in the first instance and RM1 million for a subsequence offence; and for an individual, a fine of not exceeding RM100,000 or imprisonment for a term not exceeding three years or to both, and a fine of not exceeding RM250,000 or to imprisonment for a term not exceeding five years or to both for a subsequent offence (section 18).

It must be noted that anti-profiteering laws prohibit making an unreasonably high profit, while price control measures set the maximum price of goods and services. The former is infringed when sellers mark up prices to an amount which, when calculated using the formula prescribed by the Regulations, is deemed unreasonable. On the other hand, the breach of price control laws occurs when sellers sell their goods exceeding the price cap fixed by the authorities.

3.1 Mechanism to Determine Unreasonably High Profit

The anti-profiteering provision of the Price Control and Anti-Profiteering Act 2011 applies to all types of goods and services (section 14(1)). Presently, the Minister of Domestic Trade and Cost of Living is empowered to prescribe a mechanism to determine when profit is unreasonably high by taking into consideration "(a) any tax imposition, (b) the supplier's cost; (c) supply and demand conditions; (d) the conditions and circumstances of geographical or product market; or (e) any other relevant matters in relation to the prices of goods or charges of services" (section 15). This is achieved through the Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) Regulations 2018.

Under the 2018 Regulations, a profit is deemed unreasonable if either the mark-up percentage (section 3(a)) or the margin percentage (section 3(b)) exceeds that at the beginning of the financial or calendar year, calculated on a formula so provided. To comply with the law, the profit on any subsequent date must not exceed these mark-up and margin percentages.

A mark-up percentage is defined as the ratio of $\frac{Selling\ price-Cost}{Cost}$. On the other hand, a margin percentage is defined as the ratio of $\frac{Selling\ price-Cost}{Selling\ price}$. Detailed definitions for various scenarios of selling prices and costs are given in the Regulations. Since either condition in paragraph (a) or (b) falls foul of the anti-profiteering requirement, sellers must ensure that their mark-up percentage and margin percentage, on any day, do not exceed that at the beginning of their financial or calendar year.

The Regulations provide several situations where the baseline selling price is obtained from days other than the first day of the financial or calendar year. Firstly, when the selling price on the first day is at a cheap sale price, in which case the selling price is the price immediately before the sale or offer. 'Cheap sale price' means the price of goods indicated in any manner to be less than the price at which the goods, or goods of the same description or same class, were previously sold or offered for sale.

Secondly, where there are new goods or services, and the selling price of the goods or service on the first day of the year was an introductory price or charge. In this scenario, the selling price to be taken into calculation will be the selling price immediately after the said introductory price or charge. Thirdly, when the transaction or offer for transaction only occurred for the first time after the first day of the financial year or calendar year. In this circumstance, the selling price is the price of said goods or services on the first day of its business, even when that day is not the first day of the financial or calendar year.

Fourthly, when on any day after the first day of the year, the goods or service was to be priced above the cost for the first time, the selling price is that price. Fifthly, when the first day of business is after the first day of the financial year or calendar year, as there was no business operation on the first day of the year, the selling price is the one on the first day of business.

One exception the Regulations allow is if the excess is not due to an increase in the selling price but the reduction in cost compared to the beginning of the financial or calendar year (regulation 4(6) and regulation 5(6)). This can potentially encourage businesses to operate more efficiently over time toto reduce cost and reap high profits legally.

3.2 Application of anti-profiteering law in Malaysia

Ever since the coming into force of the Price Control and Anti-Profiteering Act 2011 in 2015, a total of six news reports have appeared in the news on the enforcement of the anti-profiteering provision in the lower courts. No case has been brought to the High Court, as the Act provides that the Sessions Court is the competent court to try any offences (section 54), and hence no written judgment has been published relating to the application of the anti-profiteering provision.

As reported, the first criminal prosecution under the Act was on 5 May 2015 against Trendcell Sdn Bhd, owner of Jaya Grocer Supermarket, for a price increment of lady's fingers from RM3.10 per kilogramme on 1 January 2015, to RM9.70 from 3 to 20 January 2015. It was reported that the director of Trrendcell pleaded not guilty, but there was no follow-up news report on the case's outcome (Bernama, 2015a).

In 2016, Trendcell was again charged for increasing its profit margin of Sweet Meadow New Zealand Wild Flower Honey 500g by raising its price from RM28.90 on 6 January 2015 to RM43.99 on 6 May 2015. It was reported that the director representing Trendcell pleaded guilty, and the company paid the fine of RM30,000 (Chan, 2016).

Sengheng Electric (KL) Sdn Bhd was charged with making unreasonably high profit by marking up the price of a Pensonic Mini Bar from RM459 to RM479. The company pleaded guilty to the charge, and the Deputy Public Prosecutor asked the court to impose a deterrent sentence as a

lesson to others. Considering public interests, the Sessions Court judge sentenced Senheng Electric (KL) Sdn Bhd to a fine of RM30,000 (Bernama, 2015c).

From the reported cases, it appears that even a small increment would be penalised. The owner of Restoran Silvas Curry House was charged for increasing the price of a plate of nasi lemak from RM2.50 in January 2015 to RM3.50 in June 2015. He pleaded guilty but the Deputy Public Prosecutor pressed for a deterrent punishment, saying the restaurant had been operating for three years. The judge imposed a fine of RM4,000 (Lai, 2016).

In September 2016, a restaurant chain, Secret Recipe, and its CEO were fined RM45,000 for profiteering. Secret Recipe raised the price of Pepsi drinks at its Subang Parade branch from RM4 to RM5, which translated to an increase of profit margin of 24 sen per unit from previously 77 sen to RM1.01. In addition, they were charged for raising the price of Iced Caffe Latte from RM7.80 to RM9, which yielded an increase profit margin of 13 sen; and raising the price of Lasagna Beef from RM16.50 to RM19, which yielded an increase of profit margin of 28 sen (Bernama, 2016).

One of the largest fines reported occurred in 2015. AEON Co (M) Bhd was charged for increasing the sale price of almond muffin bread, vanilla muffin bread, chocolate chips muffin bread and blueberry muffin bread from RM1.20 to RM1.50 at its La Boheme bakery in Melaka. The Sessions Court imposed a fine of RM110,000 after the company pleaded guilty to four charges. The fines were RM20,000, RM25,000, RM30,000, and RM35,000, respectively (Bernama, 2015b).

A decision applying the anti-profiteering provision was finally being reported in the law reports in 2021. In *Shihan bin Mohd Salim v Public Prosecutor* [2021] 11 MLJ 375, the appellant Shihan appealed against his conviction by a Sessions Court Judge in 2016 for failure to respond to enforcement officers' notices for pricing and costing information, upon report by members of the public for not displaying prices and for charging unreasonable prices for drinks in his *nasi kandar* restaurant. The appellant's main ground of appeal focused on the disputed identity of the appellant as the owner of the restaurant. However, on appeal, the High Court judge pointed out that the relevant section of the Act empowers an enforcement offer to require 'any person' to furnish the required information. Hence, the High Court found that the Sessions Court Judge's decision was sound. It is notable that this decision did not discuss the application of an actual anti-profiteering offence as the appellant was not charged as such.

After a few sting operations in 2015 and 2016, no new report of a profiteering offence has appeared in the media. Also, no report has been made on using the Act against service providers. The few reported cases in the media suggest that the accused parties tend to plead guilty when charged instead of claiming trial. Although it is not clear whether the Act is still being actively enforced, the Malaysian government, via the Ministry of Domestic Trade and Cost of Living, periodically issues threats of prosecution under the Price Control and Anti-Profiteering Act 2011 as a means to dissuade businesses from raising prices (Bernama, 2023; Nizam, 2023).

4. Price theory and economic analysis of price control

Neoclassical microeconomics theory postulates that an equilibrium price for a particular good will be obtained when sellers in a competitive market do not observe excess demand and excess supply. In such a situation, the equilibrium price is the market-clearing price. In theory, this equilibrium price is also the marginal cost of the last unit of good at a market-clearing price. The idea of marginal cost, first introduced by Alfred Marshall (1890), is the analytical device used in microeconomics to explain how competitive sellers achieve their profit-maximising objective.

On the other hand, if the market is not competitive, such as one characterised by a monopoly seller, the profit-maximising seller will no longer sell at the marginal cost, for he can do better by selling at a quantity where the marginal cost equals to marginal revenue, whereby the marginal

revenue curve is solely determined by the market demand curve. At this profit-maximising quantity, the monopoly seller will sell at the price on the demand curve, for the monopoly seller is a price-setter and faces no competitor which can undercut his business. Naturally, this monopoly price will be higher than the competitive market price. This simple analysis of microeconomic theory tells us that a product's selling price is primarily determined by cost structure and the market's competitiveness. Seen in this way, a policy to lower selling prices should therefore focus on ensuring a competitive market structure (Scherer, 1987).

According to microeconomics theory, forcing sellers to sell at a selling price below the equilibrium price will lead to the problem of excess demand, which usually translates into potential buyers waiting in queues in the form of a 'shadow price' (Barzel, 1997, p. 16). This excess demand indicates that such a market is not operating efficiently. Neoclassical microeconomic theory does not favour government intervention in pricing goods and services.

Even when demand suddenly surges, such as at the beginning of the COVID-19 pandemic when everyone was looking for surgical masks as a form of protection against the COVID-19 virus, and additional supply was not forthcoming due to interruption in the supply chain of raw materials and import from overseas manufacturers being disrupted due to restriction of movements (Shaharuddin et al., 2021), neoclassical microeconomics theory would recommend to let the market achieve an equilibrium price on its own without government's intervention.

One way of thinking about the conundrum of price control is this: if quantity is truncated due to limited supply, sellers will be incentivised to sell at the corresponding marginal willingness-to-pay on the demand curve because that is the market clearing price with that limited supply. From a consumer's point of view, many will be disappointed because consumers can observe that the price has increased compared to the pre-pandemic level. This can be explained as the deadweight losses in price theory.

If, on the other hand, the government imposes price control, there will be excess demand, as the limited supply will be taken up swiftly by some consumers leaving many others not being able to find any supply even though a controlled price is imposed by the government, which in turn still leads to disappointment. This consumer disappointed is further exacerbated as consumers excessively search for goods selling at the controlled price (Chakraborti & Roberts, 2023).

Hence, in such a situation, price control only shifts surplus from increased pricing from sellers to consumers, but those consumers who didn't get any goods are none the wiser. More crucially, price control results in inefficiency from a dynamic point of view: sellers may horde their stock hoping to sell at a higher price in the black market, and price control also disincentivises sellers from working harder to source new raw materials and seek new sources of supply with a view for higher profit. In conclusion, price control translates to a disincentive to supply in times of emergency (Gwartney et al., 2015). This same conclusion was highlighted by Lott and Jones (2005) when they wrote an editorial criticising the government's plan to punish price-gouging following the Hurricane Katrina disaster in the United States.

Apart from limited supply, other circumstances for higher than marginal cost pricing can be attributed to some level of market power by the sellers. For example, monopolies price their goods and services at their profit-maximising price, which is higher than a competitive price. The same applies when the market is oligopolistic, i.e., with a small number of sellers, where each may have some influence over the market price above marginal cost. Another situation where price may be above marginal cost is when sellers have some market power resulting from product differentiation, such as those protected by intellectual property rights like copyright, patent, or trademark.

Finally, another circumstance where higher than marginal cost pricing may appear is when consumers cannot observe the product or service prices easily, making price comparison difficult, if not impossible. This situation may occur when a consumer is informed of the price after a

product has been consumed or a service rendered. Price marking law may overcome this deficiency to some extent but not always. In many situations, sellers or service providers would not be able to predetermine the price payable until after consumers have made the choices or received the service rendered, an example of which is food items pricing for self-service mixed rice (Lim, 2018). This scenario may be considered a form of information asymmetry between consumers and sellers.

5. Economic analysis of anti-profiteering law

One question we seek to answer is that if price control and anti-profiteering law are as inefficient as they appear to be, why does it remain enthralling to lawmakers? One answer from the Malaysian experience is that it is less about effective law enforcement but the potential threat of prosecution as a deterrent to sellers for increasing prices.

In a competitive market, prices increase due to one of two reasons: limited supply and an increase in cost. The first scenario has been discussed above, and legal literature considers it a form of price gouging. The price hike of face masks at the beginning of the COVID-19 pandemic can be explained by the sudden increase in demand and limited supply. Price hikes due to limited supply are best illustrated with the example of unique antique pieces. In such a situation, particularly if antiques are sold in auctions, the price is the highest bidding price, and microeconomic theory considers that as an optimal use of property rights (Coase, 1959). On the other hand, much has been written on the effects of price gouging laws in the United States. The general consensus of academics is that complaints of price gouging are a form of emotional response which do not accord with economic realities (Brewer, 2007; Giberson, 2011; Lee, 2015; Rapp, 2006; Zwolinski, 2008).

A demand-supply analysis will demonstrate that an increase in per unit cost of a good or provision of service will shift the supply curve upwards, leading to a new equilibrium price which is higher than previously and with a corresponding lower equilibrium quantity. Therefore, it is unsurprising that when the cost of goods or services increases, the price will also increase. This scenario assumes that the market is competitive, i.e., there are many suppliers of the same goods and services, consumers can make price comparisons, and there is no barrier to prevent consumers from going from one seller to another cheaper seller. In such a competitive market, a seller who unilaterally raises his price above the competitive market price will be disciplined by the market when consumers avoid him. Conversely, when one or more conditions for a competitive market are not present, sellers can raise prices without significantly losing customers.

If the market failure is due to non-disclosure of prices by sellers, such as one to deter price comparisons, a law can be enacted to make it mandatory for sellers to disclose prices. An example of such in Malaysia is the Price Control and Anti-Profiteering (Price Marking for Goods and Charges for Services) Order 2020 (PU(A) 314/2020), which makes it mandatory to mark prices on products or near products and services, failure of which is punishable as a criminal offence. On the other hand, voting by foot may be difficult if there are no other suppliers in the vicinity or relevant market. This situation may happen when the business is in some form a monopoly or when the product is differentiated (Lancaster, 1987).

Perhaps, the anti-profiteering provision may be best explained as an interventionist mechanism to correct deviations from a competitive market. From a more conservative perspective, it is desirable for consumers to voluntarily choose sellers selling at a low price and reject sellers selling at a high price. If market imperfections allow sellers to raise prices above a competitive market price, the ideal solution is to correct those imperfections rather than prevent price competition.

Despite its potential noble intention, the anti-profiteering provision of the Price Control and Anti-Profiteering Act 2011 is challenging to enforce. The Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) Regulations 2018 uses a baseline date of the preceding first of the financial year or calendar year to determine whether the profit of goods or services on a particular day is unreasonably high. Hence, the only justifiable reason for a price increase is when the cost has increased. Indeed, we can observe sellers increasing the price of their products in recent years as a response to inflationary pressure.

From an enforcement point of view, there is severe information asymmetry between the enforcer and the enforced. It is impossible for the enforcing agency to monitor by themselves the profit margin of each product on the first day of the financial year or calendar year and to determine whether the profit margin at any particular moment is higher than that on the baseline date. Apart from the sheer amount of data that is impossible to collect, determining the cost of a particular product is problematic because it includes not only the possibly fluctuating material costs but also fixed costs, such as the cost of fixed asset financing and shared costs among different product lines, such as workers' wages. Indeed, traders can justify the increase in their costs by raising wages.

For this reason, the Act requires "any person who supplies or offers to supply any goods or services" to keep all business records for seven years, failure of which amounts to an offence under the Act (section 53A). A person is required by law to furnish any record when required by the authority (section 23), and the destruction, concealment, mutilation, and alteration of records is an offence (section 27).

Even with the above record-keeping provision, it is challenging for enforcers or members of the public to detect violations. For example, an increase in a price higher than a corresponding increase in cost would be a violation, even if it were done for rounding-up purposes. Naturally, an increase in price without a corresponding increase in cost would also be a violation. Also, the Act is silent on how to deal with the problem of fluctuations in cost. It is also for this reason that the enforcement of the anti-profiteering provision has been sparse after the initial fervour, and investigation is only being carried out after complaints by the public, usually for unexpected high prices for food consumed in restaurants.

In microeconomics theory, the competitive market price is determined not by the average cost of sellers but by the marginal cost of the product in the market and the marginal willingness-to-pay of consumers as represented by the demand curve. No doubt, determining the marginal cost, in reality, is more theoretical than practical. The inconsistency between microeconomic theory's marginalism and business practices of full-cost pricing was a debate among economists in the middle of the twentieth century called 'the Marginalist Controversy' (Lee, 1984). This controversy started with Hall and Hitch's (1939) observation that businesses do not make pricing decisions based on economists' conception of marginal cost and marginal revenue but instead on a mark-up on the 'full cost', also known as 'cost-plus' pricing. Eventually, this controversy died off after Heflebower (1955) suggested that variation in profit margin by businesses in response to changes in consumer demand is a profit-maximising strategy consistent with neoclassical microeconomics' idea of marginalism.

It must be noted that neoclassical microeconomics theory of pricing at marginal cost is not the marginal cost of every producer, but just the marginal cost of that 'last' producer where market clearing quantity is achieved. In other words, other producers and sellers may be selling at a price which earns them a handsome profit. Businesses' adjustments of the profit margin, by a slight increment to overcome excess demand or a slight reduction to clear stock because of excess supply, can be explained as a profit-maximising strategy. The problem thus arises with the Price Control and Anti-Profiteering Act 2011 when the definition of unreasonably high profit prevents sellers from adjusting prices upwards to clear excess demand; this means that the anti-profiteering provision of the Price Control and Anti-Profiteering Act 2011 is inefficient.

In an ideal world, the law should only be enforced against sellers who hide price information or determine the price after a contract has been formed, such as after consumers have consumed the product. Perhaps, enforcers at the Ministry of Domestic Trade and Cost of Living have come to realise the fallibility of the Act and hence, slowed the enforcement of the anti-profiteering provision since 2016 to the extent that there has been no new news report on such enforcement in recent years.

6. Conclusion

This article examined the anti-profiteering provision of the Malaysian Price Control and Anti-Profiteering Act 2011. We show that the original intention of the anti-profiteering provision was to prevent traders from using the introduction of the Goods and Sales Tax (GST) as a pretax to raise prices. Still, even after GST has been withdrawn, the anti-profiteering law remains on the books. In essence, the anti-profiteering law is meant to prevent sellers from raising prices beyond a fixed profit margin established on the first day of the financial year or calendar year. Enforcement of the anti-profiteering provision is difficult because of the severe information asymmetry between the authorities and the sellers.

The economic literature in the middle of the twentieth century debated the efficiency of cost-plus pricing after raising concerns that business practices need to accord with economic theory on marginalism. The discussion eventually died out when it was pointed out that businesses do adjust their profit margins to cater to the increase or decrease in the demand for goods.

In an ideal world, prices should be determined by the free market. Sellers who charge too high will be disciplined by consumers when they are shunt by customers. Hence, the only necessary laws are competition law to prevent collusive behaviours and price marking law so consumers can make an informed and rational choice before purchasing. Unfortunately, we do not live in an ideal world, so interventionist laws such as the Price Control and Anti-Profiteering Act may occasionally be needed to scare sellers into not taking advantage of consumers when there is information asymmetry as to the price or when the market is less than competitive.

Acknowledgement

An early incomplete version of this article was presented at the 16th Annual Conference of the Asian Law and Economics Association, organised by the Multimedia University in 2020. Kind comments of the participants are acknowledged.

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