THE RISK FACTORS OF CORRUPTION IN THE HEALTHCARE SECTOR IN MALAYSIA: A CONCEPTUAL AND LEGAL ANALYSIS

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ABSTRACT:

Previous research indicates that there is substantial evidence of the adverse effects of corruption on the health and welfare of society at both the individual and governmental levels. The construction of hospitals, the advancement of high-tech equipment and facilities, and the growing arsenal of drugs required for treatment, when combined with a robust market of vendors and healthcare companies, create opportunities for bribery and conflict of interest in the healthcare sector. As such, this paper will examine the factors that contribute to the risk of corruption in Malaysia's healthcare sector and will suggest possible ways to intervene in order to achieve a corrupt-free nation. This research employs a doctrinal research method based on content analysis to review the literature on the concept of corruption and the factors that contribute to the risk of corruption in the healthcare sector. The solution proposed in light of the findings has significant implications for legislators who are tasked with developing a legislative framework to address the risks of corruption in the healthcare sector with the goal of promoting accountability and transparency. The paper concludes that the law can be viewed as a useful tool for enacting change toward a healthier anti-corruption environment, which would influence our society's culture and lifestyle.

KEYWORDS: *Corruption, Risks, Factors, Healthcare, Legislation*

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1.0 INTRODUCTION

Malaysia has scored between 47 and 51 on the Corruption Perceptions Index since 2015 [1]. Malaysia scored 51 points and ranked 57th out of 180 countries in 2020 [2]. Despite the Malaysian government's efforts and initiatives to combat corruption, the country's level of corruption appears to remain a serious problem. The ongoing corruption problem affects not only the country's politics and economy, but it also has the potential to harm society by influencing the norms and attitudes toward corruption. It is a separate epidemic that no vaccine can cure. Corruption is a serious

issue that must be addressed. As a result, understanding the underlying causes and risks of corruption is critical to implementing effective strategies.

The healthcare sector is one of the areas most affected by the corruption problem. Many stakeholders are involved in healthcare corruption, including ministries, hospitals, outpatient care providers, pharmacies, laboratories, researchers, medical schools, licensing, and other relevant institutions. The activities in the healthcare sector increase the chances of being involved in corruption. It appears that hospital construction, with technological advancements in high-tech equipment and facilities and an increasing arsenal of drugs required for treatment, combined with a powerful market of vendors and pharmaceutical companies, present risks of bribery and conflict of interest in the healthcare sector.

Corruption jeopardises an organisation's legitimacy, which is one of the reasons why corruption in the healthcare sector must be adequately addressed to prevent further harm to the healthcare system. It is unjust that unethical actions by an individual or a group contribute to the system's impairment, which then affects innocent people who have placed their trust in the system. This paper will investigate the factors influencing the risks for corruption in healthcare and will recommend the way forward in managing corruption in the healthcare sector with the goal of providing measures to prevent corruption in the healthcare sector.

2.0 LITERATURE REVIEW

2.1 The Concept of Corruption in the Healthcare Sector

Corruption is defined as the misuse of authority for personal gain [2]. Bribery, extortion, fraud, cartels, abuse of power, embezzlement, and money laundering are all part of it [3]. The issue with corruption is that the misuse of power bestowed upon an individual for personal gain has ramifications for other people and beyond. This type of abuse undermines trust and reliance on organisations and systems that are supposed to act in the best interests of society. Power, opportunities, and a lack of moral values can all influence corrupt behaviour [4], which can be exacerbated by “personal greed towards money” [5].

Corruption in the healthcare sector, for example, includes “diversion of patients from the public to the private sector; inappropriate prescribing; informal payments or bribery; and drug and supply thefts” [6]. When patients consent for the transfer, and it is deemed necessary, the transfer of patients from the public to the private sector can be justified. However, if the diversion is done solely for monetary gain, it is unacceptable. Inappropriate prescribing results in unnecessary high payments for medications that are not needed to manage an individual's medical problems. This results in an unjustified financial burden for both the government and the people. Bribery, a common form of corruption, involves informal payments made in lieu of official payments. Theft of drugs and supplies entails the illegal use of medications and medical supplies for personal gain.

Corruption also causes “inappropriate ordering of tests and

procedures to increase financial gain; under the table payments for care; absenteeism; and use of government resources for private practice" [7]. Absenteeism in this context refers to being absent from work for an extended period of time while still receiving pay. All of these actions increase the financial burden and have an impact on access to healthcare. The poor are disproportionately affected by the consequences of corruption, which result in disparities in access to healthcare. Compared to low-income patients, high-income patients may make informal payments in certain situations to receive the medical care they require [8]. The disparity between the rich and the poor raises the possibility of discrimination against the poor.

2.2 Factors Leading to Corruption in the Healthcare Sector

The literature review reveals a number of factors that influence the risk of corruption in the healthcare sector. Understanding such factors is critical in determining the root cause of the problems, as the severity of this disaster has had a negative impact on health issues. Bribery to avoid government drug and medicine regulations is one example, as is vaccine dilution in Uganda and the global problem of counterfeit medicines [9]. As a result, these factors will pave the way for viable and effective mechanisms to address this issue. According to the literature, the various forms of corruption in this industry are dependent on the structure of the healthcare system and government [9-12].

The first factor is the complexity of the healthcare system and the participation of a large number of stakeholders, which results in poor governance characterised by a lack of transparency, weak accountability and inefficiency, and a lack of citizen participation [10-11]. In this regard, the large number of actors involved, including government regulators (health ministries, parliaments, specialised commissions), payers (social security institutions, government officials, private insurers), providers (hospitals, doctors, pharmacists), consumers (patients), and suppliers (medical equipment and pharmaceutical companies), has heightened the complexities of their multifaceted roles. As a result, the presence of numerous actors increases the number of opportunities for corruption by complicating the intricacies of generating and analysing information, promoting transparency, and even identifying crime when it occurs. Such complications can occur when funds are diverted or misallocated at a ministry, state hospital board, or local clinic by managers, procurement officers, health professionals, dispensers, clerks, or patients [13].

Second, the financial and economic factors that become one of the dominant pressures leading to unethical practice contribute to the susceptibility of corruption in the healthcare sector. This problem has been highlighted in this context as system inefficiencies, which include the issue of medical staff wages, which have been attributed to poorly paid public sector staff whose wages have not kept up with the private sector, as well as a culture of gift-giving that creates bottlenecks and high demand for health services [14]. Poor incentives, a lack of autonomy for local governments in hiring and setting remuneration, and a lack of accountability of doctors to

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local governments have also been identified as contributing factors to corruption [10]. As a result, the pervasive financial and structural problem of not providing incentives is viewed as a root cause that must be addressed. Namadi has pointed out that this reflects broader issues of governance and public sector accountability [11]. Naher et al. also advocate for such reflection, highlighting the consequences of such irregularities in the context of a weak health system marked by poor governance, such as inadequate supervision, victim-blaming, the concentration of responsibilities and authorities at the centre, and little transparency and accountability [10].

Following that is the abuse of power by a government agent or official, which increases the risk of corruption and the illegal use of resources [9,12]. The temptation to abuse their power is primarily driven by the noncompliance of healthcare providers and facilities, including pharmaceutical companies [13]. On that note, a government agent's exclusive control and monopoly of power have increased corruption opportunities in various situations. Examples include situations in which officials have discretion without adequate control over this decision-making authority and insufficient accountability for decisions or results (including measurement of outcomes and punishment for non-performance or corruption). Furthermore, a lack of transparency (active disclosure and access to information) and a lack of active societal participation are two factors that may contribute to corruption in this context [15]. As a result, the risk of corruption among government officials in the healthcare setting includes accepting bribes to influence review boards or to obtain an approval or expedite the processing of pharmaceutical companies' applications, as well as manipulating licensing requirements. As a result, it is claimed that there is a risk of government officials abusing their discretion in providing licenses and accrediting health facilities, as well as in the use of services and products, resulting in the risk of abuse of power and resource use [12].

The considerable expense on the infrastructure and the healthcare facilities have also heightened the risk of corruption. On this note, Naher et al. contend that expensive hospital construction, high-tech equipment, and the increasing arsenal of medicines needed for treatment offer more opportunities for corruption in the health sector [10]. These risks are also combined with a robust market of vendors and pharmaceutical companies which would influence individual attitudes and norms towards corruption and making it socially acceptable [10]. Furthermore, massive private providers with substantial public funds allocated as health disbursements in many jurisdictions have also posed the risk of corruption and bribery, which usually involve a clash of interest in the healthcare sector [9].

Based on the abovementioned issues, it is recapitulated that the factors leading to corruption in the healthcare industry are directed to several grounds. Apart from the system's complexity, high public spending, market uncertainty, information asymmetry, financial issues, and extensive actors' involvement (i.e., regulators, payers, providers, consumers, and suppliers) at multiple levels have increased susceptibility to corruption. Such complexities have led to extreme uncertainty that escalates the likelihood of bribery, challenging to detect, punish, and

deter. Hence, this leads to weak or absent rules and regulations, over-regulation, lack of accountability, low salaries, and inadequate services, requiring urgent attention to be addressed.

2.3 Legislative Measures for Corruption and Healthcare

Article 25 of the 1948 Universal Declaration of Human Rights ("UDHR") states that "everyone has the right to a standard of living adequate for his or her own and his or her family's health and well-being, including food, clothing, and medical care." Second, according to Article 12 of the 1966 International Covenant on Economic, Social, and Cultural Rights ("ICESCR"), "the States Parties to the present Covenant recognise the right of everyone to the highest attainable standard of physical and mental health" [16]. According to those instruments and resolutions, the international community needs to pay more attention to health-related issue [10]. It is worth noting that Article 25 of the Universal Declaration of Human Rights connects health and standard of living. All other instruments, on the other hand, treat health as a separate right to life, defining it in terms of the "highest" standard of health "attainable" [17].

Malaysia's Federal Constitution takes health issues very seriously. Article 5(1) of this part states that "no one shall be deprived of his life or personal liberty except in accordance with the law." Part II is concerned with judicially enforceable rights that are subject to the restrictions mentioned in those provisions. If any of these rights are violated, the victim or aggrieved party may file a complaint with the High Court Division. The heated debate demonstrates the importance of health issues, even though the enlightened provisions are maintained despite the fact that those rights are not judicially enforceable [18].

Nonetheless, the law governing the healthcare system does not expressly mention corruption. As a result, in this scenario, a reference to Malaysia's primary anti-corruption legislation, the Malaysian Anti-Corruption Commission Act 2009, will be made (MACCA). The Act went into effect on January 1, 2009. The Malaysian Anti-Corruption Commission (MACC) is the relevant authority in charge of the MACCA [19]. The MACCA applies to both public bodies and their officers, as well as the private sector. There is frequently no clear distinction between bribe and gift, and some forms of reciprocity that are common in one country may be illegal in another.

Instead of the word "bribe," the MACCA defines "gratification" in the Act, which includes both monetary and non-monetary bribes. Money, donation, gift, any valuable thing of any kind, any forbearance to demand any money or money is a worth or valuable thing, any other service or favour, or any offer, undertaking, or promise of any such gratifications are all examples of gratification. As a result, Section 16 of the MACCA makes it an offence for "any person who, by himself, or by or in conjunction with any other person, corruptly solicits or receives or agrees to receive for himself or any other person; or corruptly gives, promises, or offers to any person, whether for the benefit of that person or another person, any gratification as an inducement to or a reward for, or otherwise corruptly gives, promises, or offers to any person, whether for the benefit of that.

For example, earlier this year, it was reported that the Malaysian Anti-Corruption Commission (MACC) had questioned several companies to assist investigations into allegations involving contracts for the purchase of COVID-19 test kits, personal protective equipment (PPE), and face masks totalling nearly RM30 million [20-21]. According to the report, at least five contractors were summoned to provide information on a laboratory construction project for the Ministry of Health [20]. Among other things, the real purpose of the investigation is to determine whether there was an abuse of power in awarding these contracts, which the MACC bases its case on Section 23 of the MACC Act 2009 [21].

In 2001, Malaysia passed the Anti-Money Laundering Act, which is now known as the Anti-Money Laundering, Anti-Terrorism Financing, and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA) and is abbreviated as AMLA. The most recent amendment, enacted in 2013, seeks to address “the proceeds of an unlawful activity,” in addition to property involved in or derived from money laundering and terrorism financing offences. The term "proceeds of unlawful activity" refers to "any property derived or obtained, directly or indirectly, by any person as a result of any unlawful activity," whereas "unlawful activity" refers to "any activity related, directly or indirectly, to any serious offence or any foreign serious offence" [22].

Given the evolution of Malaysian anti-corruption legislation, there are other statutes that may or may not be familiar to the general public that outline the “serious offences” envisaged by the AMLA. These include the Penal Code (Act 574), the Dangerous Drugs Act 1952, the Child Act 2001, the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, the Customs Act 1967, the Income Tax Act 1967, the Capital Market and Services Act 2007, and the Financial Services Act 2013 [22]. These various statutes are set against the backdrop of “serious offences,” which give AMLA the authority to charge anyone who commits crimes such as criminal breach of trust, accepting gratification, falsifying documents, offering and receiving bribes, theft, and others.

In the case of *Hamimah Idruss* v *PP* [2020] 6 MLJ 407, it was reported in 2012 that a medical practitioner was charged with transferring RM42 million into her account due to falsified financial documents. She was later found guilty of violating the AMLA and sentenced to 38 years in prison and an RM639 million fine. She was the first person charged under this Act in the country [23].

Both MACCA and AMLA clearly provide broad investigation powers, including the ability for law enforcement agencies and the Malaysian government to freeze, seize, confiscate, or forfeit proceeds or properties used or suspected to be used in corruption, money laundering, or terrorism financing, and gives the court the authority to forfeit properties derived from the proceeds. Another argument in favour of the Acts is that they strive to provide the most effective tool to assist law enforcement and regulatory agencies in preventing corruption, money laundering, and terrorism financing.

3.0 METHODOLOGY

Our study employs doctrinal analysis to synthesise diverse sources, including various statutory provisions, regulatory principles, interpretive guidelines and

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framework [25], related to the risk factors of corruption in the frame of the healthcare system in Malaysia. The doctrinal analysis involves examining the regulations and policies contributing to accountability and transparency in the health sector. This method is mainly characterised by the study of legal texts, and, for this reason, it is often described colloquially as "black-letter law" [26]. Also, this method directs the researchers to conduct library-based research for data collection. The library search will be assisted by the information sources via the UiTM Online Public Access Catalogue (OPAC) system to look for the collection of data from the primary sources, such as the Malaysian Anti-Corruption Commission Act 2009, Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, Penal Code and other relevant laws and regulations. In addition, the secondary data will be analysed in order to investigate the theories, concepts and legal commentaries underpinning the study on the risk factors of corruption in the healthcare sector. Hence, a variety of secondary sources will be explored, including from online databases such as Lexis Advance Malaysia, Malayan Law Journal, Current Law Journal and other databases namely Springer, ScienceDirect, SAGE, Emerald, Lawnet and others, using the keywords such as "corruption", "risks", "healthcare" and "legislation". Apart from the databases, other secondary sources, including books, journals, reports, and cases commentaries, will also be analysed to collect data for a doctrinal part. Full texts were reviewed, and articles with only casual referencing of corruption in other sectors or that did not propose theoretical legal constructs or provide empirical evidence were excluded.

Data analysis approaches adopted by this research emphasise an interpretive method. This research supports this method in producing suggestions to improve the current legal position on the risks of corruption in the healthcare sector in Malaysia and also relates to the significance of doctrinal research in formulating legal doctrines through the analysis of legal rules. In contrast to scientific research, where the validity of the results and findings is highly dependent on empirical investigation, the analysis method of this study appears to be unique and argument-based [27]. Before analysing the law, this research identifies the concept and risk factors of corruption to examine the competency of the legal system in governing anti-corruption and accountability in the healthcare sector in Malaysia.

4.0 FINDINGS AND DISCUSSION

What is noteworthy about the risk factors of corruption is that the analysis that follows shows that to ensure the efficiency of the healthcare sector, it is no doubt that corruption has enormous impacts, particularly relating to the availability and use of scarce resources. Globally, it is estimated that most healthcare budget and expenses contribute to the acts of corruption and fraud, more than a hundred billion per year reported [28]. Another related point is that several organisational factors uniquely influence the risks of corruption in the healthcare sector. In the past ten years, previous studies show that efforts to combat general corruption at international and national levels have invited and attracted attention [29]. Good governance is a crucial factor for a healthcare system to

function correctly and provide better health outcomes [30]. However, solutions against corruption in the health sector need to be sought, even in the absence of robust health systems, political will, or systemic reforms. Although it might be difficult, it is imperative to address corruption in global health. To tackle this, there are certain mechanisms of action that can make strategies for anti-corruption more effective by emphasising protective factors, including good governance approaches centred on the rule of law, transparency, accountability and participation [31].

The next consideration is transparency. Since corruption is often concealed, it is difficult to calculate. Even when it comes to the commonly used acts or approved, such as informal payments; there are few administrative documents to determine the problem's prevalence or scope. As a result, we must "shine light in dark corners" and create more information about what the government is doing and what it is supposed to do in fighting corruption. Transparency allows people to become the "eyes" in the acts of the government by giving them the information they need or demand answers so that it will reduce the likelihood that the officers will do or continue to do corruption [32].

Another essential factor and strategy to reduce corruption is accountability. To minimise corruption, not only transparency but accountability is crucial. This is because the principle of accountability is related to the primary reason why laws and regulations have been enacted in the first place. As a result, those in charge of implementing the laws must be kept accountable for their actions [33].

In promoting that the government should be more transparent, the possibility of officials being kept responsible for the government results must be publicised and increased. This can be importantly achieved in a way that the healthcare leaders who want to eliminate corruption in their workplace must start ensuring that everyone is aware of the priorities, objectives, and measures that will be used to evaluate success [32]. Palmer states that accountability is crucial for good governance and that it holds government officials responsible for their public management actions [34]. External accountability is also important, particularly in situations where corruption is present between different levels of government [32].

Effective anti-corruption strategies intend to explain the power provided to government officials in deciding who receives how much of what service. For example, studies show that government officials or medical staff with disproportionate discretion can misuse their power by extorting bribes or allocating resources unfairly while allocating permits, deciding on procurement contracts, or caring for patients [32-33]. Furthermore, Davis defines discretion as follows: “A public officer has discretion whenever the effective limits on his power leave him free to make a choice among the possible cause of action or inaction” [35].

Regulation of health sector goods and services is a core function of government. Governments are responsible for ensuring that health professionals are adequately licensed and that health products are safe and effective. Effective law enforcement (detection and enforcement) should be strategised

to fight corruption once it occurs. It should be noted that lack of enforcement is an opportunity for corruption. Therefore a complete policy to prevent corruption must recognise enforcement as a critical element.

Taken at face value for corruption control in the healthcare system, the data reflects that the relevant authorities should strengthen accountability and improve data, supervision, and salaries. Incentives should be provided to reward good performance and sanctions for poor performance, increase transparency and provide a platform for citizen's voices. One purpose of a citizen's voice is to increase the external accountability of government. Strategies to promote citizens' voices include local health boards where citizens can have input into the budgeting and planning processes; patient surveys to provide feedback on satisfaction; and complaint offices to record and mediate reports of unethical or corrupt conduct.

Apart from that, the authorities should introduce a law that requires healthcare companies to report the gifts they gave to healthcare workers. A regulatory framework should be introduced for the implementation process of healthcare matters to be documented to refine and adapt other, more general anti-corruption strategies, such as public finance management reforms, watchdog agencies, and whistle-blowing programmes. Hospital doctors should be given guidelines to inform them that they could not accept money or gifts from healthcare companies. This may change doctors' attitudes about healthcare companies' influence on their choice of medicines.

Analysis of the data also indicates that the Ministry of Health should consider establishing an independent agency to investigate and enforce efforts against corruption in clinics and hospitals and overbilling. The cash registers could improve internal accountability by speeding the data collection and analysis, producing automated reports that allow managers to see daily and cumulative monthly revenue by item, cash collection point, cost centre, and cashier. This system may help detect corruption by facilitating the comparison of reported revenue with expected revenue based on prices and the number of patients or services provided. This system also can increase transparency by providing patients with an itemised receipt for the services billed, the amount paid, and the change received. Accordingly, the strategies for anti-corruption should align with the efforts made by the Malaysian government through the Malaysian Anti-Corruption Commission (MACC) and Cabinet Special Committee on Anti-Corruption (JKKMAR) together with the international organisations and need to consider both prevention and enforcement.

5.0 CONCLUSION AND RECOMMENDATIONS

To summarise, some of the literature sheds light on what constitutes good governance and what needs to be done to achieve it. To improve accountability and transparency in Malaysian governance frameworks, it is critical to act now to build safeguards both within and outside healthcare systems to eliminate abuse and improve anti-corruption health outcomes. These are critical not only for healthcare communities but also for governments and

societies.
urthermore, there is no doubt that several important aspects of the discussion of risk factors in the Malaysian healthcare sector in this paper require further research, as this research was unable to provide an analysis of every aspect due to time and space constraints. As a result, the research presented here will be expanded by a study focusing on a specific method related to risk factors such as good risk assessment, level of accountability, corruption detection methods, the effectiveness of anti-corruption efforts, and the legal framework. Furthermore, keeping in mind the significant issues involved in healthcare corruption, it is possible and necessary to conduct additional research on other potential issues, as previously stated.

Nonetheless, it is hoped that some of the issues raised and recommended in this paper will remain relevant in the future. The findings of this study, as well as the recommendations made, provide one potential path for improvements in the laws and policies that we have in place to combat corruption in Malaysia's healthcare sector, and will thus instil public trust in the law.

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