

**PREVENTION OF CORRUPTION PRACTICES IN MALAYSIA:
“SUITABILITY OF DETERRENT SENTENCE”**

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Submitted in Partial Fulfilment of the Requirements
for the Bachelor in Legal Studies (Hons)

**University Teknologi MARA
Faculty of Law**

October 2006

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where references has been made to the work of others.

1.0 INTRODUCTION

Almost every country globally has made corruption as a criminal offence. This act has become more serious especially in today's state of high division of labour. Corruption can be generally defined as a dishonest act of giving and taking of a sum of money or other favours in return of help to the other party¹. Morally, it is a good attitude to give others gifts. Hence, there must be a grave reason why it is made an offence. This is best viewed with an example. A custom officer has duty to prohibit any illegal items from entering the state. If a drug smuggler was caught and later bribed the officer, the drugs will be in the circulation of the society. One of the consequences is that the quality of social institution will be downgraded. According to the Parliamentary debate on draft of Anti-Corruption Act on 28th of July 1997, it stated that corruption retards the development of nation and will destroy the structure of the society and a law governing.

Should this act be sanctioned with deterrent type of punishment? If the consequence of the act is so destructive, the best solution is to deter the society but if it is not, deterrent punishment will deprive them of their rights. China for example takes the approach of punishing with death penalty while Vietnam punishes offender with life imprisonment and other parts of the world punishes offender with either imprisonment or fine or both². Different act should be punished differently according to the degree of seriousness it caused.

From the Islamic perspective, gifts that we get could be considered as bribery if it is meant to oblige us to abuse our position or power. However, if it is customary for those in power to

¹ Susan Rose Ackerman, *Corruption and Government: Causes, Consequences and Reform*, (Academic Press New York 1999)

² Barbara Huber, Max Planck Institute for Foreign and International Criminal Law, Germany, *Sanction against Bribery Offences in Criminal Law*, Edited by Cyrille Fijnaut and Leo Huberts, *Corruption, Integrity and Law Enforcement*, (Kluwer Law International 1st Edition 2002)

receive gifts because of the respect, love and services that they have rendered to the people, then of course it cannot be regarded as bribery. The Holy Prophet himself used to accept gifts of various forms from the head of the states in his time and also used to give similar gifts to others. This is surely not bribery because it is customary³. If we accept this perspective, the important test is would you get the gifts if you are not holding that position. So, if someone receives a reasonable gift like a hamper of goods during feast, this should not be made an offence, as it is customary to do so.

Should the law regard the consequence of the act? In Indonesia, funds for the construction of school building or road would be allocated not just to finance the project but also to be distributed to officials handling the projects. As a consequence, many school buildings collapse only a few years after construction, and that many roads seriously damaged after few years they are built⁴. This is a case if the consequence is harsh and affecting other people's life. However, if the corruption offences is committed but the building is of the good same quality as expected in the plan and the building stood still without any damages, should the punishment be the same like the former case? This is an unfair provision. The law should have regarded the consequence of the act and not just treating it as general.

The penalty of the offence in Malaysia is imprisonment for a term of not less than fourteen days and not more than twenty years and a fine of not less than five times the sum or the value of the gratification, which is the subject matter of the offence, or ten thousand Ringgit which ever is higher⁵. Of course imprisonment is an appropriate offence if the consequence of the act is so grave and affecting other people and fine is appropriate in less serious effect. Section 294 of the Criminal Procedure Code confers discretionary power to judges to substitute the

³ <<http://vlib.unitarklj1.edu.my/staff-publications/datuk/Nst2nov96.PDF>> 11 August 2006

⁴ Adi Soetjitpo, University of Trisakti, Jakarta, Indonesia, *The Battle against Corruption in the Context of a Developing Country: the Case of Indonesia*, Edited by Cyrille Fijnaut and Leo Huberts, *Corruption, Integrity and Law Enforcement*, (Kluwer Law International First Edition 2002)

⁵ Anti-Corruption Act 1997 (Act 575)

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